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Proposed Amendment of the Sale Law in of Bengal

1889

Sub.-Law And Legislation | Sale Law |

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REVENUE DEPARTMENT.

LAND REVENUE—No. 3674—1230L.R.

CALCUTTA, { DATED THE 28TH SEPTEMBER / ISSUED THE SEPTEMBER } 1889.

FROM C. E. BUCKLAND, ESQ.,

Offg. Secretary to the Government of Bengal,

TO THE SECRETARY TO THE GOVERNMENT OF INDIA,
REVENUE AND AGRICULTURAL DEPARTMENT.

SIR,

I AM directed to address the Government of India with a view to the amendment of the Revenue Sale law in force in the Lower Provinces of Bengal, and to submit, for the information of His Excellency the Governor-General in Council, the correspondence on the subject noted in the margin. The expediency of undertaking fresh legislation with the object of tempering the alleged severity of the law in some respects, and of remedying such defects as, for instance, the insecurity of under-tenures under the existing Acts, has from time to time within recent years been discussed in Bengal, but for various reasons action has been postponed. The consideration of the subject has now reached a stage at which it is possible for His Honour the Lieutenant-Governor to bring the whole matter before the Supreme Government for their decision and orders.

Letter No 531A, dated the 4th July, 1885, from the Board of Revenue, Lower Provinces
Letter No 569A, dated the 22nd July, 1885, from the Board of Revenue, Lower Provinces.
This Government's letter to the Board, No. 2583—229LR, dated 15th December, 1885.
Letter No. 688A, dated 11th October, 1887, from the Board.
This Government's letter to the Board, No. 3580—1258LR, dated 29th November, 1887.
The Board's circular No 1141A, dated the 16th December, 1887, and the replies of eight Commissioners thereto.
Letter No 133A, dated the 12th February, 1889, from the Board of Revenue
Letter No. 1057A, dated the 30th November, 1888, from the Board of Revenue.
This Government's letter to the Solicitor to the Government of India, No. 3798—1549LR, dated the 1st December, 1888
The Solicitor's reply, No. 1281, dated 17th December, 1888, with enclosure.
Letter No 737A, dated 10th September 1889, from the Board of Revenue, Lower Provinces, with enclosures.
The Board's Certificate Procedure Manual, 1888.

2. A brief summary of the discussion which has taken place between this Government and the officers under its orders will be useful to show how the proposals which I am to formulate have been gradually arrived at. In the year 1872 the Board of Revenue, while deprecating a general revision of the law submitted for the consideration of the Local Government a suggestion for an extension of the provisions of section 9 of Act XI of 1859, so as to enable an under-tenant to deposit the arrears due at any time before the sale. The question was, however, here allowed to rest, until Sir Richard Temple in a manner re-opened it in 1874 by calling for a return showing the circumstances under which estates, and shares of estates, had during the year 1872-73 been advertised for sale on account of defaults; but the inference drawn from the facts then reported was that the law did not press with any general severity, and that the only tangible complaints made related to the sale of estates for trivial arrears and to defects in affording due notice to defaulters before bringing their estates to the hammer, and it was eventually decided that, on the whole, no case for recourse to the Legislature had been established. Ten years later, the Board, in reporting on the Land Revenue Administration of the year 1882-83, referred to the inconvenience arising from the absence of a provision in the sale law for revision by superior authority except on the recommendation of the Divisional Commissioner in cases of hardship under section 26 of the Act; and, while suggesting an amendment in this respect, they took the opportunity of making the further recommendation that sales for arrears of revenue should in the first instance be subject to all encumbrances, and that only in the event of bids falling short of the arrears due should such encumbrances be eliminated. It was subsequently urged in their

letter No. 531A, dated the 4th July, 1885, that, while Act XI of 1859 afforded no protection to under-tenure-holders, the omission, for whatever reason, on the part of the vast body of tenure-holders of the first degree to avail themselves of the provisions of the law for registration with a view to protection against sale, left no remedy for the former other than a legislative amendment on the lines suggested for the purpose of affording protection against fraudulent or accidental avoidance of under-tenures The Board recalled a suggestion previously made in favour of giving Government, or themselves, power to interfere in cases of palpable hardship otherwise than on the Commissioner's recommendation, and submitted also that a decision should be arrived at regarding the difference of opinion which existed as to whether, with reference to section 29 of Act XI of 1859, a Collector was bound to deliver to an auction-purchaser actual possession by ejectment, if necessary, or merely constructive possession after the manner of a Civil Court. On this representation the late Lieutenant-Governor requested the submission of a draft amending Bill, with a Statement of Objects and Reasons, as affording the best means of eliciting public opinion on a question of such magnitude and importance to the landed interests of Lower Bengal. This call resulted in the Board's applying, in their letter No. 688A, dated the 11th October, 1887, for the services of a special officer to undertake the task thus imposed upon them, and at the same time bringing it to the notice of the Lieutenant-Governor that an additional and urgent reason for expediting an appeal to the Legislature had been supplied by a recent ruling of the Calcutta High Court, which had caused the utmost inconvenience and hardship by transferring appeals under the Public Demands Recovery Act, VII (B.C.) of 1880, from the Collector to the Commissioner under section 2 of Act VII (B.C.) of 1868. The case was not, however, then considered ripe for the special appointment suggested. Sir Steuart Bayley decided first to have all the proposals for the amendment of the law, that had from time to time been made, brought together in a connected form, as was done in Mr. Nolan's letter to the Board, No. 3580—1258, dated the 29th November, 1887, and, in supersession of the previous request for the preparation and submission of a draft Bill, to instruct that authority to invite an expression of the views of Commissioners and other experienced revenue officers on the subject, and to forward them to Government with their own remarks. These opinions, as well as the Board's report, have at length been received, and I am now to submit the general conclusions arrived at by the Lieutenant-Governor.

MITTER AND NORRIS, JJ

Sadhusaran Sing and another ... *Appellants,*

versus

Panchdeo Lal and others ... .. *Respondents.*

I. L. R., 14, Cal. I.

3. That there is a real necessity for taking action in the direction contemplated, the difficulty created by the decision of the High Court in the case noted on the margin is, in the Lieutenant-Governor's opinion, alone sufficient to demonstrate. Collectors were formerly supposed to have the power of acting under sections 311 and 312 of the Civil Procedure Code in respect of sales held by them under the Public Demands Recovery Act, and that it was the intention of the Legislature that it should be so is the view entertained by both the Advocate-General and the Legal Remembrancer. A Divisional Bench of the Calcutta High Court has, however, ruled in this case, to which the Board referred in their letter of the 11th October, 1887, that the procedure laid down by Act XI of 1859 is applicable to certificate sales, and from this the necessary corollary is that no power of revision rests with the Court passing an order under Act VII (B.C.) of 1880, but that an error can be corrected only by appeal to the Divisional Commissioner. Having regard to the fact that the number of sales held under the Public Demands Recovery Act is very large—there were no fewer than 9,112 in the year 1886-87—and that mistakes in technical matters connected with such sales constantly occur, Sir Steuart Bayley considers that the alteration thus introduced constitutes a distinct hardship and a source of considerable inconvenience to the public; while the procedure laid down by Act XI of 1859, which was framed only for the sale of estates, appears to be peculiarly inappropriate when applied to the sale of moveable property under the certificate system. Another illustration of the hardship likely to be caused to third parties by the effect of this decision of the High Court, which the Hon'ble the Advocate-General regards as erroneous, has been brought to the notice of this Government by the Board's letter of the 10th September 1889, received while this letter was under preparation. All officers consulted agree in considering that the law, as now interpreted, must, and does, work most unsatisfactorily, and as the Advocate-General has advised that there is no prospect of obtaining a reversal of the decision, recourse must be had to legislation; for, although the

grievance is, from its technical nature, not readily understood, the Lieutenant-Governor is satisfied that it is as a matter of fact by no means trifling, and I am desired to submit that it is plainly the duty of Government, if possible, to grant redress. This, I am to suggest, might very easily be done by the insertion after the phrase "practice and procedure provided by the said Code of Civil Procedure," in section 19 of the Public Demands Recovery Act, VII (B.C.) of 1880, of the following words :—

"in respect of the power of persons, whose property has been sold in execution of decrees, to apply to the Court to set aside the sale, and the Court's power to set aside sales (sections 311 and 312); in respect of the right of appeal from orders confirming sales."

The manner in which the Public Demands Recovery Act is used, and largely used, in Lower Bengal will be fully apparent from the accompanying copy of the Certificate Procedure Manual, 1888, containing that Act and "the rules under it and relating to it," corrected up to date.

Lala Mobarak Lal and others
versus
Government and others.
XI, I. L. R., Cal. 200.

4. On another point the expediency of altering the present law seems almost equally clear, although the matter is one of less urgency. In a second case, quoted on the margin, it has been ruled by a Full Bench of the Calcutta High Court that a sale purporting to have been held under Act XI of 1859 may be set aside without reference to the limitation laid down by section 33, or to the question whether damage has been caused, on the ground that a notice having been posted for less than the time prescribed, the proceedings were null and void *ab initio*. In the opinion of the Legal Remembrancer the title of an auction-purchaser has been rendered insecure by this ruling, while revenue officers are almost unanimous in thinking that the law should be amended to prevent sales being set aside by Civil Courts otherwise than in accordance with the section above referred to. The Lieutenant-Governor is convinced that an amendment of the law with this object is called for, and he thinks that the end in view might be obtained by inserting the following sentence at the end of section 24 of Act XI of 1859 :—

"A certificate granted by the Collector under section 28 of this Act shall be conclusive evidence that the sale to which it relates was a sale under this Act."

5. Precedence has been given to the two proposals already dealt with as being calculated to remedy matters in respect of which the necessity for legislation appears to be indisputable. Of the remaining amendments, which are more or less capable of being viewed in different lights, the most important is that an estate should be sold subject to encumbrances in the first instance. The suggestion emanated from Mr. Dampier, the senior Member of the Board of Revenue, and it had the support of his successor, Mr. Reynolds, whose conclusions are thus summarised in paragraph 7 of the Board's letter to Government, No. 133A, dated the 12th February last :—

"On the whole the Board are inclined to adhere to the opinion that in this matter the law as it stands affords opportunities for much possible injustice, and they believe that some of the objections which have been advanced against their scheme are unsound, and that others would not prove serious in practice. But they are willing to admit that there is no general or urgent demand for this amendment of the law."

6. The sale of estates free from encumbrances was a necessary incident of revenue sales at the beginning of the present century, when the public demand represented ten-elevenths of the rent-roll, and could be realized only with the utmost difficulty. Had estates then been sold with the burdens imposed on them by defaulters, undoubtedly no purchasers would have been forthcoming, and the whole system of raising the revenue would have broken down owing to the absence of any regular margin of profit between the rent and the revenue together with the expenses of collection, or, in other words, of anything which could be assigned away without destroying the power of the estate to pay the public dues. It is agreed on all hands that circumstances are now very different, and that the forfeiture of intermediate rights on sale is no longer necessary for its original purpose,—the security of the revenue,—the cesses being, as a matter of fact, collected without resort to such a procedure. Those, however, who defend the existing system,—and the most experienced revenue officers are among the number,—do so on the ground that liability to forfeiture at any sale is of economic use in checking the growth of under-tenures, and that it, moreover, prevents the creation of fictitious tenures. As regards the first argument, it is very doubtful whether the creation of permanent under-tenures, as distinguished from ticcadari leases, which are practically unaffected by the sale laws, has not been, on the whole, advantageous; but even if it

be assumed that it should be an object to check the natural growth of such tenures, the sale laws appear to be hardly an efficient instrument for the purpose. As to the creation of fictitious tenures and benami transactions, there is under the existing law ample scope for such expedients to avoid the full consequences of civil court sales and sales under the certificate procedure, and, in the case of fictitious tenures registered under sections 39 to 42, Act XI of 1859, to elude the revenue sale laws.

7. The remedy proposed by the Board is a system of double sales, the first subject to existing encumbrances, and the second, free of all encumbrances, to take place only if the amount of the arrears of revenue cannot otherwise be secured. The principle has already been admitted in section 168 of the Bengal Tenancy Act, VIII of 1885, in the case of the sale of tenures, but the Lieutenant-Governor has some doubt as to its probable utility in the present instance, since the proprietor would still be in a position to create tenures until the value of his property falls below the annual revenue, receiving full consideration for so doing, and would then be able to obtain the same consideration a second time by selling the land free from encumbrances. The subordinate holder would thus continue liable to suffer the confiscation of the property possibly reclaimed by him from jungle, and the only difference would be that the process involving his ruin would be styled a second sale.

8. The only radical and equitable reform appears to the Lieutenant-Governor to be that proposed by the Bengal Government in 1859, viz, that all revenue sales should be made subject to encumbrances, as all sales under the certificate procedure now are, the right of re-entry in the absence of a bid large enough to discharge the arrears due being reserved to Government, and, if exercised, a re-settlement being effected with due regard to all existing rights consistent with security for the revenue. The hardship to zemindars of depriving them of the amount bid for an estate, when less than the revenue due, might be met by remitting the whole of the arrears, an expedient by which they would be gainers and Government would on the whole suffer no loss, as the value of estates with the power of re-settlement is generally more than sufficient to cover all arrears, while the insecurity to tenure-holders would be minimised as much as the preservation of the revenue as a first charge on the estate permits. It might safely be left to Government to deal fairly with each tenure-holder, and, as regards the danger of zemindars depreciating the value of their own property by creating fictitious tenures, it is to be observed that the practice is to some extent in vogue now, and would not in all probability be affected by the additional temptation created by the proposed amendment. The Lieutenant-Governor does not, however, consider it expedient at present to press a scheme of this kind, as revenue officers in Bengal, with only a few exceptions, are opposed to it; the laws of other Provinces, some of them recently enacted, indicate a disposition in favour of the maintenance of the system of making over a clear title to auction-purchasers; and it is apprehended that public opinion upon this point would be largely influenced by the desire of zemindars to secure the highest price for their property at revenue sales. In these circumstances, the only plan which the Lieutenant-Governor has now to suggest as practicable is the extension of the principle of registration, the benefit of which is denied to under-tenures by section 38 of the present law. Since this restriction appears to have been imposed under an impression, proved by later experience to have no real foundation, that such cases of registration would be too numerous to be manageable in practice, there seems to be no reason why it should not now be removed; and as the limitation of time imposed by Act III (B.C.) of 1862 has also been found to exclude the majority of tenures, Sir Steuart Bayley would obviate this also by permitting the registration of all tenures and under-tenures at any time in the Collector's office at a reduced fee of Rs. 2 in each case, provided that the deeds constituting them shall have been duly registered within the period fixed by law for the registration of assurances.

9. The remaining proposals are put forward with the object of—

I—empowering the Board to revise proceedings under the sale law otherwise than on a reference by the Commissioner under section 26 of Act XI of 1859;

II—interpreting the law as to the manner of delivery of possession to be given under section 29 of the Act;

III—giving notice of default to proprietors, and levying fines for late payments;

IV—realizing cesses by process of summary sale;

V—facilitating the realization of proportionate shares from co-proprietors by a joint-proprietor paying revenue; and

VI—granting the right of appeal under more favourable conditions to any one injuriously affected by a revenue sale.

The recommendations made on these several points will be taken up categorically in the succeeding paragraphs.

10. I. This proposal, which, as has been observed in paragraph 2 of this letter, emanated from the Board, has now, on maturer deliberation, been, His Honour thinks wisely, withdrawn by the same authority. It has received but little support, and appears to Sir Steuart Bayley to have been founded on a wrong principle, that of making the law uncertain in its operation by the subsequent multiplication of exceptions on grounds not taken at the outset.

11. II. The practice at present followed in giving possession under section 29 of Act XI of 1859 is in accordance with the law as interpreted by the Legal Remembrancer, who considers that a Collector is not required to give possession by metes and bounds, or to remove any individual in actual possession. The provision, however, appears to the Lieutenant-Governor to be liable to misinterpretation, and His Honour would prefer to have the wording so amended as to leave no doubt as to what is required of a Collector in this particular connection.

12. III. When the question of the working of the sale law was renewed by Sir Richard Temple's Government in 1874, the British Indian Association, who were given an opportunity of expressing their views on the subject, recommended that, before advertising estates for sale under Act XI of 1859, notices of default should be given to registered mortgage-holders and to proprietors who had registered the names of patnidars as ordinarily paying the revenue on their account, and that payment tendered after the due date should be received on satisfactory proof of its having been withheld by the fraud of an agent. Although the existing law does not contemplate any action of the kind indicated, the Lieutenant-Governor is empowered by section 6 of Act VII (B.C.) of 1868 to authorise the issue, and recovery of the costs, of notices to defaulting proprietors. The Board observe that no general use has been made of these provisions, which were introduced into the Act with special reference to the circumstances of the district of Cuttack; but they see no objection to a further extension of the principle involved therein by allowing any person interested in an estate, whether proprietor, mortgagee, judgment-creditor, or tenure-holder, to register a name and address in the Collector's office on payment of a reasonable annual fee, and by binding the Collector to send immediate notice of default accordingly by means of a registered letter. This matter is in reality ancillary to the larger question of the admission of late payments, and it is the experience of the Lieutenant-Governor that the present system, under which the acceptance of payment after the latest day is left entirely to the discretion of the Collector, works unsatisfactorily. Section 18 of the Act, which requires the Collector to record in writing his reason for such acceptance, is systematically neglected, and the result of the executive orders inculcating a liberal interpretation of the spirit of that section is that in some districts the proceedings at the auction itself are occasionally confused in a scandalous manner by wrangles as to the acceptance or refusal of revenue tendered at the last moment. Some improvement has taken place since the Lieutenant-Governor, by declining to reverse one or two sales on the recommendation of the Board, and by calling for explanations in other cases, intimated a desire to uphold Collectors when they, for apparently valid reasons, refused to accept payments not made in time; but even now the practice is uncertain and unsystematic, and Collectors not unreasonably ask for some rule for their guidance, and for the provision of some penalty against careless default, other than the extreme measure of selling the estate after the amount of the demand has been tendered. Rules to the following effect would, in the Lieutenant-Governor's opinion, meet the necessities of the case, and I am to submit them for the favourable consideration of the Government of India:—

1. Notice of default shall be given by a registered letter to the address of any one desiring to receive such intimation and paying Rs. 2 yearly in advance for the privilege, the Collector being responsible only for the posting of the letter to the address registered, and not for its delivery. Failure to post the letter shall vitiate the sale, like a defect as to any other notice required by law; but failure in its delivery shall be irrelevant.

2. Between the latest date fixed for payment, and the sixth day before the day of sale, arrears shall be received as of right on the payment of fines levied at the rate of 25 per cent. of the arrears due.

3. In extreme cases only, when the circumstances are such that a sale is obviously uncalled for and likely to be reversed, the Collector shall have the power to accept payment even during the last six days, but he must record his reasons for so doing, as at present.

The concession made by the first of these rules would probably prove a dead-letter, as experience goes to show that zemindars will not themselves undergo either trouble or expense to avoid the legal consequences of which they may complain, but it would offer a reasonable protection to such persons as might desire to take advantage of it, and by granting it Government would at least have done its duty in the matter. On its introduction, if approved, the practice at present prevalent in Burdwan and elsewhere of giving such intimation without charge would, of course, be discontinued. The issue of the notices contemplated might be enforced by executive orders, but the realization of fines requires not only express provisions in the Revenue Sale law, but also the repeal of the only surviving section of Act XII of 1841, and the connected points referred to in this paragraph should, in the Lieutenant-Governor's opinion, also be provided for by the Legislature.

13. IV. The question of making the cess demands realizable under the sale law, in the event of the modification of the latter in the manner proposed, is reported on in paragraph 16 of the Board's letter of the 12th February, 1889, but was originally raised by this Government. It is apprehended in certain quarters that such a measure would be universally unacceptable to zemindars, and, although it is, no doubt, desirable to shorten the procedure at present adopted for the recovery of the cesses alluded to, the Lieutenant-Governor has, on further consideration, come to the conclusion that this matter need not be taken up as part of the scheme now submitted for the consideration of the Government of India.

14. V. The proposal for the extension of the provisions of section 49 of the Cess Act, IX (B.C.) of 1880, transcribed in the margin for ready reference, to excess payments on account of land revenue, originated with the Eastern Bengal Landholders' Association, and the Lieutenant-Governor concurs with the Board in thinking that there is no objection to allowing the privilege therein described in the case of revenue as well as in that of cesses; but if the summary procedure by certificate be also extended, provision should, as suggested by the Board, be made that the application shall bear a stamp as for a plaint.

49 "Whenever any shareholder in an estate who is recorded in the general register of revenue-paying* and revenue free lands maintained by the Collector, or whenever any shareholder in an estate the extent of whose share or interest in such estate is recorded in any other register kept up by the Collector of lands paying revenue or rent to the Collector direct, shall have paid the road cess or public works cess payable in respect of such estate, or any part thereof in excess of the amount proportionate to his own interest in such estate, he may, within fifteen days of such payment being made, move the Collector to make a certificate as provided by any law for the time being in force for the recovery of public demands, specifying the amount which has been paid in by such shareholder as cess in respect of the recorded share or interest of any other shareholder in the estate,

"and thereupon such Collector may, if he think fit, make such certificate, and such certificate shall have the same effect as a certificate made for the recovery of a public demand; and the same notice shall be issued and the same proceedings may be taken thereon by the Collector as in case of such certificate,

"Provided that the person in whose favour the certificate has been made shall be deemed to be the decree holder for the sum mentioned in the certificate, and all proceedings taken by the Collector for the recovery of the sums mentioned in the certificate shall be taken at the instance of the person in whose favour the certificate has been made, and at his cost, and on his responsibility, and not otherwise,

"Provided also that if any person against whom such certificate has been made shall object that the amount of the cesses for the recovery of which the certificate has been made is greater than the amount which the applicant for the certificate would recover from such person in a Civil Court as being equitably payable in respect of such person's share or interest in the estate, and if in the opinion of the Collector there is probable ground for such objection, the Collector may, if he see fit, cancel such certificate and leave the applicant to his remedy in the Civil Court"

15. VI. The Commissioner of the Presidency Division has suggested that the right of appeal against a revenue sale, which is at present restricted to the defaulter under section 25 of Act XI of 1859, as amended by section 2 of Act VII (B.C.) of 1868, should be extended to any one affected by the sale; and that the rate of interest payable on the refund of purchase money when a sale has been annulled should no longer be limited to the highest rates of interest paid on current Government securities under section 32 of the Act, but should be capable of being levied at 12 per cent. per annum, in view of the fact that these purchases are frequently made on borrowed money. These suggestions appear to be both judicious and reasonable, and they have the support of the Lieutenant-Governor.

16. The views of the Government of India on the proposals discussed in the preceding paragraphs will determine the general question of codifying the existing sale law of Bengal. The inconvenience of having several overlapping enactments on the same subject is clearly demonstrated in paragraphs 2 and 3 of the Board's letter No. 133A, dated the 12th February, 1889; and if the amendments suggested above, or a major portion of them, are accepted by the Government of India, it would, in the Lieutenant-Governor's opinion, be expedient to take the opportunity to recast the existing laws in a convenient form. The economic condition of Bengal renders a single enactment in the place of the two distinct processes laid down by Act XI of 1859 and Act VII (B.C.) of 1880, respectively, undesirable; and Sir Steuart Bayley would prefer

to have two separate Acts, each complete in itself, one on the subject of the collection of land revenue, and the other on that of the realization of other public demands recoverable as land revenue. As he believes that the general scope of the amendments proposed in this letter will meet with the approval of the Government of India, the Lieutenant-Governor will depute a special officer to prepare draft Bills, the one giving effect to the suggestions made, codifying the several laws on the subject of sales for the recovery of Government demands in the manner indicated, and the other amending and consolidating the Public Demands Recovery Act, the drafts being eventually circulated to the public, and the criticisms of those interested invited in the usual way. He proposes to select for this purpose Mr J Beames, C.S, now Officiating Member of the Board of Revenue, who will be ousted from his acting appointment in November by the return of Mr. F. B. Peacock, the permanent incumbent. I am in conclusion to solicit the favour of the orders of His Excellency in Council whether the Bengal Legislative Council may be considered competent to undertake the fresh legislation sketched out and recommended in this letter For instance, the Lieutenant-Governor has special doubt whether the amendment proposed in paragraph 4 of this letter might not be considered as being beyond the powers of the Bengal Council to pass, on the ground of its interfering with the jurisdiction of the High Court.

I have the honour to be,

SIR,

Your most obedient servant,

C. E. BUCKLAND,

Offg. Secretary to the Govt. of Bengal.

W J.—Reg No 3318C—149—30 9 89

No. 531A, dated Calcutta, the 4th July 1885.

From—P. NOLAN, Esq., Offg. Secretary to the Board of Revenue, L. P.,
To—The Secretary to the Government of Bengal, Revenue Department.

MR. REYNOLDS.

THE Board have for some time had under their consideration certain questions connected with the working of the Revenue Sale Law in the Lower Provinces, and, now that the provisions of the Bengal Tenancy Act have given legislative recognition to the principle that the sale of a tenure for arrears of rent shall be held subject to registered encumbrances, if the bidding, under these conditions, is sufficient to satisfy the demand against the property, the time seems to have arrived for the Board to lay before the Government definite proposals, which are for the most part based upon opinions left on record by Mr. Dampier, and which have the concurrence of his present successor in the Board. Correspondence which has already passed will have led the Government to expect a further communication from the Board on this subject. In the Land Revenue Administration Report for 1882-83 Mr. Dampier brought to notice the provision of Act XI of 1859, under which sales, which have once become final and conclusive, cannot be interfered with either by the Board of Revenue or by the Government. In the Resolution upon that report the Lieutenant-Governor desired that the state of the law upon the subject should be more fully considered in communication with the law officers of Government, and the Board have accordingly obtained a full expression of opinion from the Legal Remembrancer. Again in the Resolution on the report for 1883-84 the remarks of the Board on the operation of the Sale Law were referred to, and it was intimated that the Lieutenant-Governor would be prepared hereafter to take the question into consideration.

2. The proposals which the Board now desire to submit are partly such as can be dealt with by executive orders, and partly such as involve modifications of the law. The former refer to the attitude which Collectors should take in dealing with cases in which a default in the payment of revenue has occurred. The most important item of the latter has been incidentally noticed by the Board in their letter to Government, No. 633A of the 23rd July 1884, in which it was suggested that a system might be introduced of putting up estates to sale for arrears of revenue, subject in the first instance to declared and registered encumbrances. A suggestion to the same effect was made in paragraph 170 of the Board's Land Revenue Administration Report for 1883-84. The Board also desire to recommend that power should be reserved to Government to review, under certain conditions, sales which would be final and conclusive under the present law; and that the powers of a Collector in giving possession of an estate under section 29 of Act XI of 1859 should be more precisely defined.

3. It is unnecessary to remind the Government that the Revenue Sale Law, as embodied in Act XI of 1859, is a measure of extreme stringency, both as it bears upon proprietors of estates, and as it affects the holders of subordinate tenures and interests. If the Government demand of revenue is not discharged to the uttermost farthing before sunset on the latest day of payment, the Collector has an absolute right to sell the estate. The subsequent tender of the arrear, even if the tender be accepted, does not bar the sale. The position of subordinate holders is even more precarious, as their titles are liable to be annulled by the default of the superior landlord. They may deposit the arrear before the day of payment has expired, but they have no power to appeal against a sale, and their interests, unless protected under section 39 of the Act, may be swept away by the auction-purchaser. If a proprietor appeals against a sale, the Commissioner is not competent to annul the sale, except on proof that it has not been conducted according to the provisions of the Act; but if the sale, though strictly legal, appears to him to involve hardship, he may suspend orders on the appeal, and may apply to Government, through the Board, to cancel the sale on such conditions as may be deemed equitable and proper. But if he does not exercise this power of reference, and does not annul the sale on the ground of illegality, the sale becomes final and conclusive, and neither the Board nor the Government has any further power to interfere.

4. The severity of the law is tempered by the provision in section 18 of Act XI of 1859, which permits a Collector to exempt an estate from sale at any time before the sale has actually commenced, and by orders which have from time to time been passed by Government and by the Board enjoining leniency and moderation in the administration of the law. By a circular order issued in July 1881 Collectors are prohibited from selling estates for petty arrears till they have ascertained that the default is not due to some oversight or mistake. The instructions issued on this subject have, in general, been faithfully observed, and the Board believe that it is a rare thing for an estate to be sold without the knowledge and acquiescence of some one, at least, among the proprietors. Not only is the number of estates which are sold for arrears small when compared with the total number on the rent-roll, but not more than about one-fifth of those which become liable to sale are actually sold.

5. The protection thus given to owners of estates is, the Board believe, nearly as complete as is compatible with the punctual realization of the Government demand. Under the Land Registration Act the separate shares of all proprietors have been defined, and any proprietor, who thinks fit to do so, can open a separate account for his own share, and thus secure himself from any underhand dealing on the part of his co-owners. Isolated cases of hardship, which occasionally occur in spite of all precautions, are provided for by section 26 of the Act. In a subsequent paragraph of this letter the Board will propose some further extension of this power

of cancelling sales on the ground of hardship, but they must repeat an expression of their conviction that the law, as it stands, when read subject to the instructions which have been issued for its administration, leaves no substantial ground for complaint on the part of proprietors.

6. The interests of proprietors, however, are not the only interests affected by a sale for arrears, and a serious difference of opinion has arisen between the Board and a Divisional Commissioner regarding the duty of a Collector to refrain from sale on the application of a person other than the proprietor of the estate. Cases occur in which a proprietor intentionally defaults for the purpose of getting his estate sold under Act XI of 1859. His object is sometimes to get rid of the under-tenures; sometimes it is merely to obtain the higher price which the security of the title, based upon a sale certificate, affords.

7. In the case which gave rise to the correspondence referred to there can be no reasonable doubt that it was the object of the proprietors to get rid of a mokurrary lease which had been granted in the year 1852. With this object the proprietors purposely allowed the estate to fall into arrears of revenue. When the sale notices were issued the mokurraridars, who had spent many thousands of rupees on the improvement of their property, became alarmed, as they knew that their tenure could be cancelled by an auction-purchaser. The proprietors assured them that the default was merely a mistake, and that the amount would be paid up in time to stop the sale. But the mokurraridars had too much at stake to be satisfied with this assurance. They went into the sudder station and tendered the amount of the arrear to the Collector, who refused to receive the money, on the ground that those who tendered it were not proprietors. In due course the mehal was sold, as the proprietors never attempted to pay in the arrear, and the mokurraridars, after appealing in vain to the Commissioner against the sale, petitioned the Board to set the sale aside. It was manifest that a grievous hardship and wrong had been committed, but the Board had no power to redress it, as the sale had become final and conclusive under section 27 of Act XI of 1859.

8. In communicating to the Commissioner their orders rejecting the appeal, the Board expressed an opinion that the Collector had not properly exercised the discretion vested in him by the law. He should, in the Board's opinion, have accepted the tender, and have exempted the estate from sale, whether the tender was made by the proprietor or by any other person. The Board went on to make the following remarks :—

"The law of summary sale for the recovery of arrears of revenue is a necessary evil, but an evil nevertheless. One of the cardinal objections to it is that, in order to secure the public revenue, it unavoidably places it in the power of an unscrupulous proprietor to let his estate go to sale for the express purpose of avoiding tenures and liens with which he or his predecessors have encumbered it, and by this to appropriate to himself a second time the market value of interests which he has already by his own acts transferred to others. * * * * It is the plain duty of the revenue officers of Government to defeat any such schemes by any means which the law leaves at their disposal, rather than to encourage or assist them. It is incumbent upon those who are entrusted with the working of an engine which is so powerful for evil as the Bengal Revenue Sale Law to exercise to the fullest extent the ample discretion which the Legislature has left in their hands in order to counteract its possible evil effects."

9. The Board desired that the Commissioner should communicate these remarks to the Collectors of his division; but on this being done it appeared that the Commissioner and the Collectors entertained a very different view of the duties of a revenue officer from that held by the Board. The Commissioner thought that a Collector ought not to do anything which would frustrate the intention of a proprietor to let his estate go to revenue sale so as to obtain the best price for it. In a note which he left on record just before he retired from the service, Mr. Dampier referred to this as an erroneous and mischievous view. He considered that the power of bringing an estate to sale is a power which the law confers on Government, but that Government is bound to do all it can to prevent this power from being misused so as to create more hardship than is unavoidable consistently with the object for which the power has been placed in its hands. Mr. Dampier added that the discussion affected a most important and delicate part of a Collector's duties, and that the decision must influence the future administration of the Sale Law. He therefore left it to be dealt with by his successor in office. He thought it desirable that the question should be submitted to Government, because he considered the principle advocated by the Commissioner to be wrong and mischievous, and, as such views had been maintained by high officers after an expression of the opinion of the Board, he thought that no doubt should be allowed to remain, but that the opinion of Government on the subject should be unmistakeably declared and widely published.

10. In these remarks, left on record by Mr. Dampier, Mr. Reynolds entirely concurs. He altogether repudiates the view which has been put forward in some quarters, that a proprietor has any right to have his estate sold by the Collector under Act XI of 1859. The right to sell the estate is the right of Government alone; and the exercise of it should be restricted to the object for which it was conferred—the punctual realization of the Government demand. The Board do not desire to recommend that an estate should be exempted from sale on any other condition than the payment of the arrears; nor do they wish to propose that any other person than the proprietor should have a right to appeal against a sale; but they consider that, as a general rule, a Collector should accept payment of arrears from any person who may tender it, and they would ask for a definite expression of the opinion of the Government as to the principle by which Collectors should be guided in dealing with cases of default, the Board's view being that a Collector should look upon a revenue sale as a measure to be as far as possible avoided, and to be enforced only in the event of the demand not being satisfied by other means.

11. It has been suggested that a clause should be inserted in the proclamation issued under section 7, Act XI of 1859, warning all persons concerned that the estate will be sold on a prescribed day unless the arrears are paid, but that any one whose interests are affected by the sale may pay the amount to the Collector, and that if all dues are so paid before the commencement of the sale, the estate will not be sold. This might be done by an executive order, and the Board are disposed to recommend that an order to this effect should be issued, though they are not sanguine that any marked benefit would result from it.

12. Adequate protection cannot be given to under-tenants without an alteration of the law, and the Board are of opinion that the law should be modified by the insertion of a section providing that estates shall in the first instance be put up to sale subject to encumbrances, and shall only be sold with the present power to avoid encumbrances in the event of the bidding at the first sale not being sufficient to cover the outstanding demand and costs. The principle is not altogether new, for the Sale Law, as it stood before Act XI of 1859 was passed, gave the Government power to direct, in any case in which it thought fit, that a sale should be held in the first instance subject to existing encumbrances. The provisions of Regulation XI of 1822, regarding the annulment of encumbrances by auction-purchasers, and the power to hold sales subject to encumbrances, were as follow :—

"XXX. In pursuance of the principle of holding the estate of a defaulter answerable for the punctual realization of the Government revenue in the state in which it stood at the time the settlement was concluded (at which time, by the dissolution of its previous engagements, Government must be considered to resume all rights possessed on the acquisition of the country, save where otherwise specially provided), all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with ryots or the like settled or credited by the first engager or his representatives, subsequently to the settlement, as well as all tenures which the first engager may under the conditions of his settlement, have been competent to set aside, alter or renew, shall be liable to be avoided and annulled by the purchaser of the estate or mehal at a sale for arrears due on account of it, subject only to such conditions of renewal as attached to the tenure at the time of settlement aforesaid, saving always and except *bonâ fide* leases of ground for the erection of dwelling-houses, or buildings, or for offices thereunto belonging, or for gardens, tanks, canals, water-courses, or the like purposes, which leases or engagements shall, so long as the land is duly appropriated to such purposes and the stipulated rent paid, continue in force and effect.

XXXI. The above rules regarding under-tenures are indispensible for the security of the public resources, and have accordingly been uniformly acted upon as a general and fundamental principle of the revenue system of this presidency; but as the application of the rules leaves an opening to abuse by enabling a zemindar, who may have granted leases, or other temporary or permanent assignments of his land for a present money consideration, to annihilate the under-tenures so created by him, it is hereby provided that it shall be competent to the Governor-General in Council, when he shall see proper, at any time before a sale for arrears shall have been actually made, to direct it to be made, subject to the leases, assignments, or other encumbrances with which a proprietor in possession, his ancestors, or predecessors, may have burthened his assessed estate, or to such of them as shall appear proper. In all such cases notice of the condition imposed by the Governor-General in Council shall be given by the Collector at the time of calling up the lot for sale, and such further notification shall be made as the Governor-General in Council may direct; provided, however, that in case the sale so restricted shall not realize an amount equal to the arrear due at the time of sale, or there shall appear ground to apprehend that by reason of the restriction the future realization of revenue will be endangered, it shall be competent to the Governor-General in Council, at any time before such restricted sale shall have been finally confirmed under the rule contained in section 22 of this Regulation, to direct the sale to be cancelled, and a new sale of the estate to be made without restriction. If subsequently to confirmation occasion should arise to bring to sale for arrears an estate purchased with a restriction of the above description, it shall at all times be competent to the Governor-General in Council to direct that the mehal shall be sold without any restriction beyond what may have attached to the tenure at the original settlement, or with the reservation before reserved. In the former event, should the purchase-money realized by the unrestricted sale exceed in a large amount the sum obtained at the restricted sale, it shall further be competent to the Governor-General in Council to direct a portion, or the whole, of the excess to be paid to the persons whose interests, having been reserved at the first, shall become void at the second sale."

13. These sections were reproduced, with no material alterations, in Act XII of 1841 and in Act I of 1845. But when the revision of the law was next taken in hand, there was a general feeling that the rights of under-tenants ought to be more effectually protected, and a series of interesting discussions took place in the Legislative Council on the subject. When the Bill, which afterwards became Act XI of 1859, was first read on the 22nd December 1855, the Council had two schemes before it—the scheme of Sir F. Halliday, the Lieutenant-Governor of Bengal, and the scheme of Sir J. P. (then Mr.) Grant, who was in charge of the Bill. The proposal of the Bengal Government was "that all tenures in an estate, without exception or enquiry, should be allowed to hold as good against an auction-purchaser as against the former proprietor, as long as the parent estate should be saleable at a price which would cover the arrears of revenue due from it; but that as soon as the parent estate should fail to be saleable at such a price, it should be forfeited to Government, and the whole of the past settlement under-tenures should be annulled; whereupon Government should proceed to form a new settlement of the land." The scheme proposed in the Bill was "that when the holder of any tenure created since the Permanent Settlement should apply for registration, the Collector should immediately cause the talook to be measured and surveyed at the expense of the talookdar; and if the Collector should be satisfied that the rent of the talook is fully sufficient to afford its share of the jumma of the estate, the tenure should be registered in complete detail, and this registration should secure it to all future time, whatever might become of the parent estate."

14. No discussion took place on that occasion, but at the second reading of the Bill on the 26th January 1856, Mr. Currie, who represented Bengal, and Mr. Allen, who represented the North-West Provinces, preferred the scheme of the Bengal Government to that embodied in the Bill. Mr. Allen added that a still better system had been suggested in 1850 by Mr. Ricketts, in a minute which the Government had published in 1853. Under this system, said

Mr. Allen, there would be two classes of engagements—one protecting the capitalist against all auction-purchasers except the Government, the other protecting him against the Government as well as against all other parties whatsoever.

15. The Bill was then referred to a Select Committee, but the question of the protection to be given to under-tenants was again very fully discussed on the 17th May 1856 in connection with a petition which had been presented to the Council by Captain Crawfurd, Manager of the Mulnath Indigo Concern in Nuddea. This petition (which is worth perusal) is printed in the proceedings of the 24th November 1855. After a long debate the petition was ordered to be referred to the Select Committee on the Bill.

16. When the report of the Select Committee was presented on the 16th April 1859, it appeared that the Committee had substantially adopted the scheme of Sir H. Ricketts, and the sections relating to the subject were passed, with some immaterial amendments, at the subsequent meeting of the 27th April. The Act, as originally worded, required existing tenures to be registered within three years of the date of the passing of the Act, and tenures created subsequently to be registered within three months of their creation. But the applications for registry were very few, and this was attributed to the high scale of fees prescribed by the Act. The fees were accordingly lowered, and the period was extended by Act III (B.C.) of 1862, which allowed a period of three years from the passing of that Act for the registration of tenures and farms created before the passing of Act XI of 1859, and declared that future applications must be made within three months from the date of the deeds constituting the tenure.

17. This has continued to be the law up to the present day. The Collector keeps a special register, entries in which are made only after careful enquiry and with the sanction of the Commissioner, and a common register in which tenures are entered on the application of the parties, after no more enquiry than is involved in the issue of a notice to ascertain whether any objections are made by a recorded proprietor of the estate or by any other party interested. If no objection is made, or if the objections made are plainly untenable, the application for registry is granted. Common registry secures tenures and farms against any auction-purchaser at a sale for arrears of revenue, except the Government. Special registry secures them against the Government also. As the term for the registration of old tenures has long ago expired, no tenures can now be registered unless the application is made within three months of the creation of the tenure.

18. It may be objected that the present proposal of the Board, that estates sold for arrears of revenue should in the first instance be put up subject to registered encumbrances, is nothing more than a reversion to the law as it stood before 1859—a reversion, in other words, to a system which has been fully tried and found defective, and deliberately abandoned. But before the proposal is condemned on this ground, there are three considerations which should not, in the Board's opinion, be overlooked.

19. In the first place, it is not intended to reproduce the law as it stood before 1859. That law authorised the Local Government, in any particular case, and for special reasons shown, to direct that the sale of a particular mehal should be made subject to leases and other encumbrances, or to such of them as might appear proper. The Board have no information before them to show what circumstances were considered to justify the exercise of this power, or how often it was put in force; but that an arbitrary provision of this kind should fail to work satisfactorily is only what might have been expected. No one could tell beforehand under what conditions an estate would be sold, nor whether, if the price fell short of the arrear, Government would use its power to cancel the sale. The scheme recommended by the Board, on the contrary, proposes the adoption of a uniform procedure in all cases, estates being invariably first put up to sale subject to encumbrances, and afterwards sold with power to avoid encumbrances, in the event of the first bidding falling short of the amount of the arrears. In other words, what is proposed is that the right and interest of the defaulting proprietor should always be put to sale before any attempt is made to sell the estate itself.

20. In the second place, the scheme of voluntary registration contemplated by the Act of 1859 was radically defective, inasmuch as it applied only to such tenures and farms as are held immediately of the proprietors of estates. Durputnidars, and other similar holders of tenures of the second degree, cannot claim the protection of the Act.

21. In the third place (and this consideration is the most important of all), the system introduced by the Act of 1859 has absolutely failed. It rested upon the assumption that tenure-holders would avail themselves largely, if not universally, of the right to register. But the experience of 26 years has entirely falsified this expectation. The law is little more than a dead letter. It was in vain that the period originally allowed for registration was extended by the Act of 1862; it is in vain that tenure-holders are now told that they can protect themselves by registering within three months of the creation of their tenures. There is no reluctance to register the deeds under Act III of 1877, for this registration is essential to the validity of the title; but the voluntary registration necessary to protect the tenures from being cancelled under the provisions of the Sale Law is systematically neglected.

22. To what extent this neglect is carried may be illustrated by a few figures. There are a greater number of tenures in Backergunge than in any other district in the Lower Provinces. The latest returns under Act IX (B.C.) of 1880 show 261,893 tenures assessed with road cess in Backergunge. But the Collector's registers under Act XI of 1859 show 72 entries of tenures for Backergunge in the common register, the special register being entirely blank. The special register for the whole of the Lower Provinces shows only 26 tenures registered as having been held from the time of the Permanent Settlement. The total number of all entries in the special register is only 344, of which 153 belong to the single district of Shahabad.

The entries in the common register for the whole of the Lower Provinces are only 4,107, and the entries for the last five years give an average of only 128 entries a year, as follows:—

1879-80	...	...			...	163
1880-81	...	...	...	...	...	186
1881-82	...		...		...	65
1882-83	...	...	...	...	...	118
1883-84		...	..		...	108
				Total	...	640

The total number of tenures assessed with road cess is 11,80,618, so that about one tenure in every 265 is registered. No doubt many of the tenures shown in the cess returns are tenures of the second and third degree, to which the Act of 1859 was never intended to apply; but when every allowance has been made on this account, it seems probable that, out of every 100 tenures which the Act was designed to protect, 99 remain unprotected.

23. The Board therefore cannot assent to the opinion which has been expressed by some revenue officers in the course of the discussions on this question, that the registration sections of Act XI of 1859 supply all that can reasonably be demanded for the protection of under-tenants. It is indisputable that the law, for some reason or other, has not adequately dealt with the mischief which it was designed to remedy. It is not enough to say that, if tenure-holders neglect to avail themselves of the provisions of the law, they have only themselves to blame when they suffer. The great majority of these men cannot avail themselves of those provisions. Many of them never had the right to do so, and others have lost the right by the *laches* of their predecessors. No tenure which was created before the 1st April 1885 can now be registered under Act XI of 1859. The tenures created before that date are nearly 1,200,000, and of these less than 4,500 are registered. It appears to the Board to be the duty of Government to recognize the fact that the law which was passed in 1859 has not answered its purpose, and that some other means must be devised of meeting the evil which it was intended to check. The simplest and most effectual means appears to the Board to be that which has been suggested in the foregoing paragraphs—a means which would involve no hardship to proprietors and no risk to the Government revenue. The time has gone by for saying—as Regulation XI of 1822 says—that the principle of allowing tenures to be cancelled by an auction sale "is indispensible to the security of the public resources." The economic condition of Bengal has greatly changed from the days when the revenue represented ten-elevenths of the rent-roll. But the proposal which is now submitted provides even for those exceptional cases in which the power to cancel under-tenures may be necessary in the interests of the public revenue.

24. The Board are also of opinion that, if the amendment of the Sale Law is taken in hand, it would be desirable to sanction some relaxation of the provisions under which a sale becomes legally final and conclusive. Under the present law a proprietor whose estate has been sold may appeal to the Commissioner against the sale. The Commissioner is declared "competent" to annul any sale which shall appear to him not to have been conducted according to the law. This is generally—and no doubt rightly—understood to mean that the Commissioner is bound to set aside a sale if any material irregularity has been committed, though it might be as well to express this meaning in less ambiguous language. If the sale has been regular, the Commissioner has no power to set it aside, but he is permitted, on the ground of hardship or injustice, to suspend orders on the appeal, and to represent the case to the Board of Revenue, who, if they see cause, may recommend to the Local Government to annul the sale. If, however, the Commissioner does not think fit to exercise this power, but dismisses the appeal, the sale becomes final, and neither the Board nor the Government has any jurisdiction to interfere with it. This leaves it entirely in the discretion of the Commissioner to decide whether a case is one of hardship and injustice or not; no rule is, or indeed can be, laid down for his guidance, and what one Commissioner looks upon as hardship will be regarded by another as no hardship at all. The Board do not wish to recommend that any second appeal should be allowed, but they think it would be an improvement to provide that, in any case in which a Commissioner dismisses an appeal and does not exercise his power of reference under section 26, the appellant should be allowed to petition the Board on the ground of hardship, and the Board should be at liberty to recommend Government to annul the sale.

25. Lastly, there is a section of the present law which seems to call for some legislative explanation, as its meaning has been variously understood, and the Courts have not (so far as the Board are aware) given any authoritative exposition to guide the interpretation of it. Section 29 of Act XI of 1859 prescribes the duty of a Collector in giving possession to an auction-purchaser. The Collector is directed to order delivery of possession to be made by removing any person who may refuse to vacate the estate or share, by proclamation to the occupants of the property, and by affixing a copy of the sale certificate at the mal cutcherry or in some conspicuous place of the estate.

26. Mr. Dampier was at one time inclined to hold that these words required the Collector to define the boundaries of the estate or share, to give the auction-purchaser possession of the specific lands so defined, and to remove any person who might set up an adverse title. The Legal Remembrancer, to whom the question was referred, took an entirely different view. He was of opinion that it was not the province of the Collector to lay down the boundaries, or to give possession otherwise than by the proclamation to the tenants and the publication of the sale certificate, and he thought that the power to remove persons who might refuse to vacate

was limited to persons whose rights had unquestionably passed by the sale, that is, to the ex-proprietors and persons claiming under or through them. He did not consider that these words gave the Collector any power to remove persons claiming under a different title, or alleging that the lands of which they were in possession did not belong to the estate which had been sold.

27. On this point Mr. Reynolds has personally no doubt that the view taken by the Legal Remembrancer is correct, and he is strengthened in this opinion by the wording of the old law on the subject. Mr Dampier's view of the Collector's duties is in accordance rather with the wording of Regulation XI of 1822 than with that of the present Act. Section 28 of the Regulation prescribes an elaborate procedure for giving possession of the estate. The Collector is to publish a statement of the lands sold; and the section goes on to declare that, should obstacles be experienced in giving possession from the opposition of the former proprietors or of under-tenants, or because of boundary disputes with neighbouring zemindars, the Governor-General in Council may depute a Covenanted Civil Servant as a Commissioner to determine the limit of the lands in which the purchaser is to be held to have acquired an interest by his purchase, and the nature and extent of the rights and interests to be possessed by him under that title, and to give possession accordingly.

28. If Mr Dampier's view were correct, the duties of a Collector under the present law would be much the same as those of the Special Commissioner under the Regulation. But it is to be noticed that in the subsequent sale laws (Act XII of 1841 and Act I of 1842) these provisions about giving possession were entirely omitted, and the Collector was only directed to issue a proclamation. Under Act XI of 1859 he is authorised also to remove persons who may refuse to vacate the estate or share, but if it had been intended to give him power to define the lands, the description and area of the lands would have been entered in the specification annexed to the certificate given in Schedule A appended to the Act. The certificate, however, only states that A B has purchased the mehal specified below, and the specification gives nothing more than the number and name of the mehal, the name of the former proprietor, and the sudder jumma.

29. The Board have now some cases before them in which auction-purchasers have called upon the Collector to give them possession according to the survey map, and as the matter is one upon which different opinions have been entertained by different members of the Board, it seems that the language of the section is open to misconstruction, and that an amendment of its wording is desirable.

No. 569A, dated Calcutta, the 22nd July 1885.

From—P. NOLAN, Esq., Offg. Secretary to the Board of Revenue., L. P.,
To—The Secretary to the Government of Bengal, Revenue Department.

MR. REYNOLDS.

IN continuation of my letter No. 531A, dated 4th July 1885, I am directed to forward the accompanying copy of a letter from the Superintendent and Remembrancer of Legal Affairs, No. 411, dated 30th June 1885, and to say that, in the event of the Government deciding to take in hand the amendment of the Sale Law, it will be desirable that the effect of the Full Bench decision referred to by the Legal Remembrancer should be carefully considered, though Mr. Reynolds must add that the decision does not appear to him to have the effects which the Legal Remembrancer has ascribed to it.

No. 411, dated Calcutta, the 30th June 1885.

From—T. T. ALLEN, Esq., Superintendent and Remembrancer of Legal Affairs,
To—The Secretary to the Board of Revenue, Lower Provinces.

Lala Mobarak Lall and others *versus* Government and others.

I HAVE the honour to invite your attention to the decision of the High Court in the case noted in the margin, reported in the I. L. R., Cal., vol. XI., p. 200. By this decision the machinery which the law provides for the recovery of the Government revenue has been affected, and, under certain circumstances, the title acquired by a purchaser at a revenue sale rendered insecure.

No. 2583—929LR, dated Calcutta, the 15th December 1885.

From—W. C. MACPHERSON, Esq., Offg. Under-Secretary to the Govt. of Bengal, Revenue Department,
To—The Secretary to the Board of Revenue, Land Revenue Department.

WITH reference to your letter No. 531A, dated the 4th July 1885, and the previous correspondence, on the subject of the proposed amendment of the Revenue Sale Law, I am desired by the Lieutenant-Governor to say that he is not now prepared to take up the question of amending the Sale Law. The subject is a wide one, and it is desirable that, before legislation on it is approached, public opinion should be elicited on the proposals which it may be thought desirable to put forward. The Lieutenant-Governor would therefore be glad if, at their convenience, the Board would submit to Government their proposals on this important subject in the shape of a draft Bill, which might be circulated for criticism. The draft Bill should be accompanied with a Statement of Objects and Reasons.

2. In regard to the questions discussed in the 10th and preceding paragraphs of your letter above named, I am to say that the Lieutenant-Governor agrees with the Board that the right to sell an estate for arrears of revenue is the right of Government alone, and that the

view which has been put forward, that a proprietor can claim of right to have his estate sold by the Collector under Act XI of 1859, is wholly untenable. Sir Rivers Thompson trusts that the confidence expressed in the 3rd paragraph of your letter No. 805A, dated the 5th November 1885, that District Collectors are, as a rule, sufficiently alive to the importance of attending minutely to the requirements of the law in regard to sale procedure is well founded.

No. 688A, dated Calcutta, the 11th October 1887.

From—C. E. BUCKLAND, Esq., Offg Secretary to the Board of Revenue, L.P.,
To—The Secretary to the Government of Bengal, Revenue Department.

MR REYNOLDS.

I AM directed to acknowledge the receipt of Mr. Macpherson's letter No. 2903—1019LR, dated the 15th September 1887, on the subject of the preparation by the Board of a draft Bill for the amendment of the Revenue Sale Law.

2. In reply, I am to represent that Sir Rivers Thompson expressed himself as not prepared to take up the question, and he desired that the Board would submit the draft to Government at their convenience. The subject is a very large one, involving the consolidation of at least three important Acts, besides the consideration of the amendments which appear to the Board to be desirable. The Board feel serious doubts of their ability to formulate their proposals with the completeness and accuracy which the importance of the question demands, unless they can have the assistance of a special officer to undertake the duty. The work of preparing the Bill would probably require the undivided attention of such an officer for a period of two months.

3. I am to add that the period which has elapsed since the Board addressed Government on this subject in July 1885 has emphasised the necessity for a reconsideration of the provisions of the existing law. A decision of the High Court, passed in April 1886, led to the promulgation of the Board's circular No. 3 for January 1887, and a comparison of that circular with the instructions which it superseded will show how completely the Court's decision has altered the view taken by the Revenue authorities of the procedure required by the law. A Commissioner has recently addressed the Board, urging very forcibly the necessity for the interference of the Legislature to amend the law as interpreted by the High Court; and the Board, while reserving for the present any final expression of their views, are strongly of opinion that this point of the procedure to be followed when immoveable property is sold in execution of a certificate should be carefully considered in any Bill which may be drafted for the amendment of the Sale Law.

4. The Board would therefore request that the Government will be pleased to consider whether it will be practicable to place the services of a qualified officer temporarily at the disposal of the Board for the duty of preparing the draft Bill. If this should not be feasible, and the Government should still desire the Bill to be drafted, the Board will do their best to carry out the orders by the agency of their ordinary staff, but there will necessarily be some delay in the submission of their proposals.

No. 3580—1258LR, dated Calcutta, the 29th November 1887.

From—P. NOLAN, Esq., Secretary to the Government of Bengal, Revenue Dept.,
To—The Secretary to the Board of Revenue, L. P., Land Revenue Department.

I AM directed to acknowledge the receipt of your letter No. 688A, dated the 11th October 1887, in which the Board state that a recent decision of the High Court has emphasised the necessity for a reconsideration of the Revenue Sale Law, and apply for the services of a qualified officer to assist in the preparation of a draft Bill.

2. Proposals for the amendment of Act XI of 1859 have from time to time come under the consideration of Government, the last being those embodied in the Board's letter No. 531A, dated 4th July 1885. These were to the effect—

(1) That estates in respect of which a default has occurred in the payment of revenue should, in the first instance, be put up to sale, subject to declared and registered encumbrances; and should be sold with power to avoid encumbrances only in the event of the bidding at the first auction being insufficient to cover the outstanding demands with costs.

(2) That where a Commissioner dismisses an appeal, and does not exercise his power of reporting the case under section 26 with a view to the sale being set aside by Government on the ground of hardship, the appellant should be allowed to make a further representation to the Board.

(3) That the law as to giving possession to auction-purchasers be amended, so as to remove doubts which have been expressed in some quarters as to the legality of the present practice.

In Mr. Macpherson's letter No. 2583—929LR, dated the 15th December 1885, the Board were informed that the Lieutenant-Governor was not at the time prepared to take up the subject of amending the Sale Laws, but desired to have the proposals put into the shape of a draft Bill, on which the opinion of revenue officers might be taken.

3. The first of these suggestions corresponds with the recommendation made in regard to the sale of tenures and holdings by the Rent Law Commission, and it has been embodied in Chapter XIV of the Bengal Tenancy Act. Sir Steuart Bayley considers that the principle upon which it rests is sound, inasmuch as it is not desirable, in cases of default, to disturb

vested interests more than may be necessary in order to secure the rights of the exchequer. There is, however, some doubt as to whether the proposal meets an actual want practically felt. It may with advantage be ascertained whether under-tenures are in fact often declared void after a sale, as the failure of the tenure-holders to avail themselves of the ready means of protection afforded by the present law suggests a suspicion that they consider that they are in no great danger. This was the view taken by the Board in 1872, as indicated by Mr. McNeile's letter of that year, No. 201A, dated the 4th June. It will also be desirable to elicit the opinions of experienced revenue officers as to whether the liability of estates to sale subject to encumbrances might be expected to lead to the creation of fictitious tenures or mortgages, designed to maintain in substance the beneficial interest of the proprietors in the event of their ostensible title being sold for default. It is true that the rights of Government would be protected by the power to sell the estate ultimately free of all encumbrances; but it is not expedient on other grounds to offer any artificial encouragement to the development of this form of subinfeudation. It is also a question whether the desired end might not be obtained by somewhat relaxing the provisions of Act XI of 1859 and Act III (B.C.) of 1862 as to the time within which encumbrances may be registered in the collectorate, and by giving permission to register under-tenures not held directly from the proprietor. If by "declared and registered encumbrances" the Board contemplate only such encumbrances as have been notified in the Collector's office, with a special view to their protection in case of the sale of the estate, no great change in the existing law would be necessary to give effect to the suggestion. In the Assam Land and Revenue Regulation, 1886, no limitation as to time is imposed to restrict the registration of protected tenures.

4. It is not probable that any serious objection will be taken to the second and third proposals of the Board, but by themselves they are of minor importance. The Board have also referred to two decisions of the High Court* as deserving consideration in case the law is amended, but without expressing any opinion as to whether their practical effect is beneficial or injurious, and without suggesting any change in connection with them. It is observed that the Legal Remembrancer has reported that the title acquired by purchasers at revenue sales has, under certain circumstances, been rendered insecure by the ruling in Lala Mobaruck Lall's case. This may indirectly affect the interests of the revenue, inasmuch as the Courts in reversing sales may award costs or damages against Government or its servants, and it will probably be found advisable to re-assert the principle that after a limited period sales for arrears of revenue should, if they have not been questioned in the interval, be considered final.

* Lala Mobaruck Lall and others *versus* Government and others. Indian Law Report, Calcutta series, part IV, volume XI, page 200, April 1885

Sadhusaran Singh and another *versus* Panchdeo Lal and others. Indian Law Report, 14, Calcutta, 1.

5. The Lieutenant-Governor, on a consideration of the whole subject, so far as it has hitherto been discussed, is not disposed to press the Board to put their suggestions in the form of a Bill, and he cannot at this moment depute a special officer to examine the question. It will be sufficient for the present to invite the opinions of Commissioners and other experienced revenue officers, and with this view a copy of this letter may be circulated to them, with any further observations which the Board may wish to offer in order to elucidate the matter. In particular, the Board may with advantage specify what encumbrances they would protect at the first sale as declared and registered; also what action they propose for consideration with reference to the High Court decisions referred to above. When the replies to this reference have been received and considered, it can be decided whether any amendment of the present law is desirable; and if so, what shape should be given to the measure to be drafted with that object.

6. The Lieutenant-Governor understands that what the landholders desire in regard to the recovery of revenue is to receive notices in certain cases of the occurrence of a default, before their estates are advertised for sale, and to have advertised sales stopped when the arrears are tendered before the auction, if it can be proved that the failure has not been due to any fault of theirs. The British Indian Association, having been consulted upon the subject in 1875, recommended that such notice should be given to registered mortgage-holders and to proprietors who had registered the names of putnidars as ordinarily paying the revenue on their account; also that revenue should be received when tendered after the due date, where satisfactory proof was forthcoming that it had been withheld by the fraud of an agent. Collectors, on the other hand, complain that under the system at present in force they are in most cases practically compelled to accept arrears tendered after the latest day fixed for payment, and until the very hour of the auction, to the great inconvenience of their establishment. Under such circumstances, it is left to their discretion to accept or to refuse the arrears tendered, and they ask for some rule for their guidance, and for the provision of some penalty against careless default, other than the extreme measure of selling the estate after the amount of the demand has been tendered. It may be possible to meet both these views, contradictory as they appear at first sight, by providing that payment shall be accepted, after the date fixed as the last for receiving the revenue in the ordinary manner, on payment of a fixed fine, and that notice of default shall be sent to the registered address of those who have intimated their desire to receive such information, paying a moderate fee for the privilege. It would be necessary to provide that the Collector should be responsible only for the despatch of the notice to the address registered, by a registered letter or otherwise, and not for the actual delivery of the notice, the receipt of which the defaulter might wish to evade. The giving of notice in such cases might be provided for by executive order without any change in the law; but it is doubtful whether any effectual provision could with safety be made in this manner for the realization of fines.

7. I am further to invite opinion as to whether, in case the Sale Laws are modified in the direction of making them less stringent, it would be expedient to extend the revised procedure to the recovery of demands under the Cess Act of 1880. These cesses are paid with the revenue as a part of the public dues of the estates, and it seems obvious that there must be inconvenience and waste of power in recovering the two parts of the demand by different processes. The certificate procedure, under which the cesses are realized, has certainly the advantage of ensuring that notice shall in each instance be given to defaulters before the sale of their property, and that any objection which they may have to make shall be heard. This must in some instances have the effect of saving estates from sale; but it is a question whether the observance of these formalities in regard to a demand practically fixed, as to which no notice is really required, and no valid objection can be lodged, is not in reality a cruel kindness, involving zomindars in considerable expense, and occasioning more sales than it prevents. In the year 1886-87 the land revenue amounted to Rs. 4,06,08,780, demanded from 159,612 estates: in realizing it 14,456* estates were advertised for sale, and 1,595 estates, a little less than one per cent. of the whole number, were in fact sold. There were also 263 sales of shares in estates. The cesses amounted to Rs. 80,62,925, and to realize this 80,395 certificates were issued, while the number of estates sold is not stated in the return. It is well known that most of the estates sold on account of arrears of revenue are voluntarily permitted by the owners to go to auction, but there is no reason to believe that this ever occurs with regard to sales for cesses, the form in which they are conducted being such that it is presumed that no proprietor would adopt it as a means of disposing of his property to the best advantage. What is sold is not the estate, with or without encumbrances, but the right, title and interest of the person against whom the certificate has been filed, so that the purchaser has to take the risk of a bad title, and therefore offers only a moderate price. The present opportunity may be taken to examine what amount of cost, trouble, and loss by forced sales has been caused by the certificate procedure as applied to cess demands, and of considering whether, on the whole, that system is preferable, in the interests of landlords and of the State, to a modified form of the law under which the land revenue is realized.

(See Appendix IX.)
* 14456 became liable to sale.

No. 3A, dated Calcutta, the 4th January 1889.

From—C. E. Buckland, Esq., Offg. Secy. to the Board of Revenue, L. P.,
To—The Secretary to the Government of Bengal, Revenue Department.

With reference to Government order No. $\frac{3930}{1592}$ LR, dated 10th December 1888, I am directed to submit herewith a copy of the correspondence noted in the margin* on the subject of the amendment of the Sale Law (Act XI of 1859), and to say that the submission of the Board's report has been delayed by the non-receipt of a reply from the Commissioner of Patna. The Board hope to submit their report within a week after they receive Mr. Boxwell's reply. A representation on one of the subjects discussed in the correspondence (appeals against sales held in execution of certificates) has already been laid before Government in the Board's letter No. 1057A, dated the 20th November 1888.

Mr. Reynolds.

* No. 1141A, dated 16th December 188., from the Board to all Commissioners.
No 1003 G.C.—V11—58, dated 5th March 1888, from the Commissioner of Chittagong, and of its enclosure
No. 855R G., dated 24th March 1888, from the Commissioner of Burdwan, and of its enclosures.
No 108R, dated 25th April 1888, from the Commissioner of Rajshahye.
No. 817R, dated 25th May 1888, from the Commissioner of Chota Nagpore.
No. 942R, dated 2nd July 1888, from the Commissioner of Bhagulpore.
No. 1337L. R., dated 20th July 1888, from the Commissioner of Dacca.
No. 1983R, dated 28th September 1888, from the Commissioner of Orissa.
No. 4781L.R., dated 9th November 1888, from the Commissioner of the Presidency Division, and of its enclosures.

No. 1141A, dated Calcutta, the 16th December 1887.

From—C. E. Buckland, Esq., Offg. Secy. to the Board of Revenue, L. P.,
To—All Commissioners.

I am directed to forward, for your perusal and consideration, copies of the correspondence noted in the margin, and to request that, after obtaining the opinions of those of your subordinate officers whom you may desire to consult, you will favour the Board with an expression of your views on the questions suggested in the letter from the Government of Bengal.

Mr. Reynolds.

Board to Government, No. 631A, dated 4th July 1885.
Government to Board, No. 3580—1258L R, dated 29th November 1887.

2. Paragraph 3 of the Government letter refers to the recommendation made by the Board that estates should, in the first instance, be put up to sale subject to incumbrances. On this point it is to be considered—

(1) Whether any need for such a provision is practically felt;
(2) Whether the object could not be attained by a comparatively slight modification of the present law.

The neglect of tenure-holders to avail themselves of the protection afforded by the registration provisions of Act XI of 1859 appears to the Board to be a remarkable phenomenon, the causes of which have never been fully examined. It does not seem reasonable to conclude that the mere fact that the law is permissive, and not imperative, renders the public indifferent to the advantages which it holds out to them. At the same time it is of little use to amend the law if it is still to remain as inoperative as it is at present.

3. Your opinion is also invited on the second and third of the proposals submitted to Government by the Board.

4. The decision in the case of Lala Mobaruck Lall, referred to in the 4th paragraph of the Government letter, was considered by the Legal Remembrancer to have an important bearing on the interests of Government. It was a case in which the Collector fixed a sale day which was not 30 clear days from the date of affixing the notification under section 6. A Full Bench of the High Court held that. notwithstanding the provisions of section 8, Act VII (B.C.) of 1868, this error of procedure made the sale null and void. It would follow from this that, if the sale was not merely voidable, but void *ab initio*, the limitations of section 33 of Act XI of 1859 would not apply to it. It would not be necessary for the plaintiff to show that he had sustained substantial injury, or to have appealed to the Commissioner, or to bring his suit within the term of one year. This would manifestly tend to make the title of auction-purchasers insecure, and also to involve the Government in liability for costs in suits for the reversal of sales. It is to be considered how the law should be modified in order to avoid these contingencies.

5. The other case noticed in this paragraph is that which led to the issue of the Board's circular No. 3 of January 1887, and your opinion on the effects of this ruling has already been invited by the Board in a separate communication. It appears a serious hardship that the provisions of section 311 *et seq* of the Code of Civil Procedure should be declared inapplicable to sales of immoveable property held in execution of certificates, and that persons aggrieved by such sales should have no other remedy than by appeal to the Commissioner.

6. The Board will be glad to receive a full expression of your opinion on the procedure suggested by the Government in the 6th paragraph of its letter. The matters for consideration appear to be—

(1) how far zemindars should be allowed to relieve themselves of liability by registering the names of their putnidars as the persons responsible for the payment of the revenue;

(2) Whether the law should recognize the right of any person to pay in arrears after the last day of payment;

(3) Whether this right may be conceded subject to the payment of a fine or penalty;

(4) Whether notice of default should be given by registered letters, and under what conditions.

It will not be overlooked that when Act XI of 1859 was passed, section 2 of Act XII of 1841 was suffered to remain unrepealed. It may also be said that a kind of penalty is practically levied, because an application to the Collector to exempt an estate from sale requires an 8-anna stamp. The Board would wish to know whether it is the practice in your division to require a separate application, and consequently a separate stamp, in respect of each estate. The practice of giving notice to defaulters by post-cards is understood to be already in force in some districts, but only in cases of petty arrears.

7. The proposal to make the cess demand realizable under the Sale Law is one upon which the opinions of landholders as well as of Collectors should be invited. It is not probable that the Government would wish to press the suggestion if it were shown that it would be generally unacceptable to the zemindars, but the Board have some reason to think that, in some districts at least, proprietors would be willing to adopt it. The last sentence of the Government letter indicates the matters which should be considered in your report on this part of the subject.

8. The Board will be glad if you will not confine your report to these specified points, but will offer freely any suggestions which you may desire to contribute to the discussion of the question. It is not proposed to undertake any immediate legislation, and consequently the present call need not be treated as an urgent one; but the Board will hope to be in receipt of your reply within two months from this date.

No. 1003GC—VII—58, dated Chittagong, the 5th March 1888.

From—D. R. Lyall, Esq., Commissioner of the Chittagong Division,

To—The Secretary to the Board of Revenue, Lower Provinces.

I have the honour to submit the report called for in your No. 1141A, dated 16th December, after consulting the Collectors of this division.

2. The first point raised is the question whether estates which fall in arrear should, in the first place, be put up to sale subject to encumbrances. All Collectors of this division are opposed to such a sale, as it would simply be a nominal sale, which would attract no bidders and would add to Collector's work, as each mehal would have to be put up twice instead of once.

In these opinions I fully agree. The sale law has been so often called a hard law that most men accept it to be so without much thought. My own view is that it is a hard law only in appearance, and that in actual working it is really a very lenient law. I quite admit that the ordinary litigious landowner would be delighted with an alteration in the law, which would enable him to put off paying the Government revenue for an indefinite period, and under which he would create tenures which would enable him to ruin the purchaser who tried to take possession; but with such a law Government revenue would be uncollected, and the life of a Collector (not now a very happy one) would become unbearable.

The need for such a provision as that now suggested is also most distinctly not felt. On this point Mr. Price writes thus:—"I believe that it is very rare that an auction-purchaser

proceeds to cancel or annul tenures *bonâ fide* existing at the time of his purchase. He is satisfied with his purchase, and is averse to raise opposition and difficulties around him in the management of his new property; and it is for this reason, I think, that recourse to the protection afforded by the registration provisions of Act XI of 1859 has been so infrequent. It is not likely that the omission is largely due to ignorance of the provisions of the law, for a knowledge of legal provisions has of late years become widely diffused, even in the most backward of districts." Mr. Manson, in paragraph 6 of his letter, which I send for the Board's perusal, takes the same view, and my own experience entirely coincides with theirs.

The sale of pergunnah Govindopore in Dacca is the most typical case that has occurred in my experience. That pergunnah had been entirely given out in under-tenures, so much so that the nominal owners did not even derive so much income as would pay the Government revenue, which was constantly in arrear. Finally it was determined to sell on the occurrence of the next arrear, and the estate was bought by Nawab Ashanullah.

To the best of my belief he did not annul a single tenure. He revised the rents so as to cover the Government revenue and give him a fair profit, and to the best of my recollection the whole was done amicably and without friction or recourse to the law courts.

This is a very strong case in favour of the view taken by the Collectors and myself.

3. The Board next ask whether encumbrances could not be protected by a very slight modification of the present law. On this point Mr. Boroosh considers that any man should be allowed to pay in Government revenue in arrear, together with a fine of, say, six per cent., power being given to such to sue the owners.

He would also send registered notices of default to such proprietors and mortgage holders as chose to register an address in the Collector's office, and pay the cost of such notice.

Beyond this he considers no alteration of the law necessary.

Mr. Price considers that the failure to register was due partly to the high fees and partly to the provisions of Act XI of 1859 not being fully known before the time allowed elapsed. (This hardly is consistent with what has been quoted above.)

He would therefore extend the power to register old tenures for a further term of two years; would reduce the fee; and would allow new tenures—a term of one year from the date of the deed constituting the tenures.

4. The question at issue is really a much wider one than at first sight appears. The Board seem disposed to give increased protection to rights of under-tenure holders.

I am entirely opposed to this, and I look on the way in which subinfeudation has extended in Bengal as a very serious evil, which, far from fostering, Government should try to check in every legal way. I suppose it cannot be denied that every step of sub-feudation means an additional link in the chain of middlemen, and therefore an additional intermediate profit to be made between Government and the cultivator.

The Government demand remains fixed, and the result is that the cultivator pays more, and this is proved by the fact that the ryot of a talukdar almost invariably pays more than the ryot of a zemindar.

At the time of the permanent settlement it is, I think, clear that Government intended the zemindar and the ryot to be the only links, but they were obliged to admit the existence of intermediate tenures, and eventually even to legislate for them in Regulation VIII of 1819. It seems to me that but for the dread of losing all rights in a tenure, which the present sale law induces, the process of subfeudation would have gone even further than it has, and that the strictness of the sale law is actually a boon to the ryot.

I am therefore opposed to any alteration in the law which would make the position of the tenure-holder more secure.

My own view is that there is such a thing as being too paternal.

Old tenure-holders had the chance of registering, and did not avail themselves of it.

Holders of newly created tenures have exactly the same option and decline to take advantage of it, and I cannot see why Government should step in and say to such people "you know nothing of your own affairs, and you shall be protected, whether you like it or not." As regards tenure-holders of the second and lower degrees, I look on the Board's proposal to protect them as revolutionising all the principles of the permanent settlement. Such tenures are, in a revenue point of view, necessary evils: we must now admit the existence of such evils; but I would do no more than this, and am completely opposed to encouraging their multiplication, which the present proposal would have the effect of doing.

5. I trust that what I have said will not be misunderstood. I am most thoroughly opposed to the sale law being worked harshly, and agree most fully with paragraph 10 of the Board's letter to Government, but I think the law as now worked under the orders of Government and the Board is not harsh. A law is required that can be worked harshly if necessary, and we have such a law, and I am opposed to reducing its potential severity, though I agree that it would be intolerable if, for instance, every estate falling into arrear were actually sold.

I also look on it as a safeguard against Bengal being more full than it is at present of *bhadra loque*, who exist on the difference between the amount paid by the ryot and that paid to Government, and who are generally non-productive members of the community.

6. As regards addition to powers of appeal, Mr. Price gives no decided opinion. Mr. Boroosh does not think any additional power of appeal is necessary, but considers the question one of little real importance. Mr. Manson objects on the ground that it would extend the time before the sale became final, and thus would delay in collection of revenue.

I think the Board are in the best position to answer this question, and I myself think that no such appeal is necessary. Speaking for myself, I can say that I send up every case in which I think there is the smallest ground for asserting hardship, and the Board have sometimes refused to send on cases reported, but it may be that cases occur which the Board consider should have been sent up.

7. The next point is the law as to giving possession. Mr. Price thinks that formal possession alone should be at first given, the power of removal being only exercised in the event of that failing. Mr. Boroosh thinks the law, as interpreted by the Legal Remembrancer and Mr. Reynolds, is sufficient, and would leave it as it is. Mr Manson's opinion is given in his paragraph 17.

In this, as in all other questions connected with the sale law, it is necessary to go back to the final effect of the working of the law on the revenue.

It must be admitted that originally Government owned the whole of the land absolutely, and that at the time of the permanent settlement a part of its rights were made over to zemindars on condition that for each area of land so made over to each proprietor a fixed sum should be paid in as revenue. There ought to have been a survey at that time, but there was not, and Government has now accepted the subsequent survey as showing the lands responsible for the Government revenue.

As the law now stands, I think there can be no doubt that the opinions of Mr. Reynolds and the Legal Remembrancer are correct, but the question is whether the law as it now stands protects the interests of Government, that is, of the public as against the encroachments of individuals, and my opinion is that it does not.

To take a simple case, let us suppose that the figure A in the margin represents a small estate originally assessed at Rs. 10 and entirely surrounded by the larger estates B on the north and C on the south.

These estates gradually encroach on A, until only the small part "*a*" is left, which does not pay the revenue, so the owner of A defaults and the mehal is bought by some one. He asks to be put in possession, but can only under the present law get possession as against the late proprietor of A, and has no redress against the owners of B and C, even though the survey maps may show clearly that the land of A has been misappropriated. The purchaser therefore defaults, and after one or two sales the mehal A is finally bought by Government. As the law now stands the owners of B and C would be safe even against Government, and the public revenue would suffer, while B and C would be gainers.

The case is one which is occurring daily, not perhaps in quite so simple a form as I have put it, but still land is transferred by force or by the action of the Civil Courts to estates other than that to which it belonged at the time of the survey; and if the present law be not altered, fraud will have to be added to the cause of transfer. Landowners would soon find out that there was a new means added to those already existing of doing the public purse and holding land revenue free, and the number of estates bought in by Government and found on enquiry to be merged in others would soon increase.

It is not very clear whether Mr. Reynolds considered that the old law or the present was the better, but for the above reasons I have no hesitation in thinking that the old law was anyhow the safer; nor do I think it unfair, as the claim of the State for revenue must be held to override all private rights, however acquired.

8. Neither the Collectors of Tipperah or of Noakhally express any opinion on the question raised in paragraph 4 of the Board's letter.

Mr. Manson's opinion is given in paragraph 18 of his letter, and I concur generally with him. I do not think it necessary to alter the law simply on account of the decision referred to, unless further experience should show that it is necessary to do so.

9. My opinion, and that of the Collectors of this division, regarding paragraph 5 of your letter have already been given in this office No. 705G.C.—VII—5, dated 17th November last, and I adhere to the opinion there expressed.

10. I am entirely opposed to the proposal in clause 1 of paragraph 6, that zemindars should be allowed to escape the penalty of possibility of sale if they register the name of the putnidar who ordinarily pays. Mr. Price agrees in the above opinion, and Mr. Manson gives his opinion very strongly to the same effect in paragraph 20 of his letter, to which I beg reference, as he puts the matter very strongly and clearly.

Put shortly, the question appears to me to be this. Government granted the permanent settlement in Bengal with the prime intention of inducing zemindars to improve their estates, but also to facilitate the collection of revenue, a certain number of zemindars being responsible for the prompt payment of Government revenue into the treasury by a certain date. The whole of the Government establishment for the collection of revenue in Bengal is framed on the supposition that each zemindar pays in his revenue promptly, and without any call on the part of the Collector.

If for the present system a system of notices is instituted, the Government must increase the Collector's establishment, which is sufficient only for mere collection purposes, and a burden

which was thrown on the zemindars at the time of settlement, and on the basis of which the settlements were made, will be transferred to general tax-payer.

The British Indian Association are quite right, from their point of view, in demanding this boon, but I cannot believe that the Board will back up their request.

11. The next question is whether the law should recognize the right of any one to pay in arrears after the last day of payment.

Mr. Price would allow any one having an interest in protecting the estate from sale to pay in after the latest day on presentation of a stamped petition.

Mr. Borooah does not notice the subject, and Mr. Manson discusses it in paragraph 20 (2) of his letter.

I am entirely opposed to giving any one a right to pay up after the last day. The present lenient way in which the Act is worked practically protects all genuine rights, and to give any one a legal right to pay in would simply be putting back the kist day and causing the multiplication of arrears.

12. Mr. Price, who recommends the acceptance of arrears after the latest day, would simply insist on a petition in each case, considering that sufficient penalty. Mr. Borooah does not give any opinion, and Mr. Manson's is given in paragraph 22 (3) of his letter.

As I am opposed to any such right being given, I am necessarily opposed to its being given on payment of a fine; but should the principle be accepted, the fine should be a very substantial one—of at least Re. 1 on every Rs. 5 of arrear.

„ 2	between	Rs.	5	and	10.
„ 4	„	„	10	„	20.
„ 6	„	„	20	„	30.
„ 10	„	„	30	„	50.
„ 15	„	„	50	„	75.
„ 20	„	„	75	„	100.

and above that Rs. 4 for every Rs. 25 or part of Rs. 25.

This should be in addition to the stamp now required on the application. This would necessitate the entire repeal of Act XII of 1841.

13. The Collector of Tipperah is opposed to issue of notices of default. The Collector of Noakhally is silent on the point. Mr. Manson shows the uselessness of such notices in the end of his 22nd paragraph.

14. Much as I should wish to see cess realizable under the sale law, I presume the change will not be made without the consent of the zemindars, and if that be the case, it is useless to discuss it.

The saving of having road cess and land revenue in one towji would be very great, while the hardship of selling for arrears would not be nearly so great as land-owners anticipate.

15. The circumstances of Chittagong differ so much from those of other districts, and Mr. Manson has given so much attention to the subject, that I forward his report in original, and request its return when done with.

16. I regret this report has been delayed by the press of work which the recent frontier raids has forced on me.

No. 1883—VIII—42G, dated Chittagong, the 4th February 1888.

From—A. Manson, Esq., Collector of Chittagong,
To—The Commissioner of the Chittagong Division.

With reference to your No. 814GC—VII—58, dated 30th December 1887, and enclosures, regarding the sale law, I have the honour to submit the following report.

1 Government letter No. 3580—1258L.R., dated 29th November 1887, paragraph 3, and paragraph 2 of the Board's covering letter, ask first whether there is any practical need for an amendment of the sale law to provide that an *estate* should be put to sale first, subject to "*declared and registered encumbrances.*" Here it is needful to understand clearly the meaning of terms used. Inasmuch as Chittagong district contributes by far the largest number of sales, it is as well to give figures, because I observe that both the Board and Government take for granted that every sale is a sale of an *estate* or else of a share :—

	Years.	Defaults.	Total sales.	Detail of sales in column 3: Estates.	Separate accounts.	Tenures under the five-third rule.
	In 1878-79 in Chittagong district there were in all ..	15,453	2,050	*	...	*
	„ 1879-80 ditto ditto ..	7,867	2,403	*	29	*
These must be taken together, because, owing to pressure of work, some of the sale-work of 1880-81 went into the year following	„ 1880-81 ditto ditto ...	1,935	1,274	*	34	*
	„ 1881-82 ditto ditto	2,099	1,846	*	18	*
	„ 1882-83 ditto ditto	2,095	1,441	447	28	168
	„ 1883-84 ditto ditto ...	3,893	1,295	432	14	849
	„ 1884-85 ditto ditto	3,461	1,109	312	15	770
	„ 1885-86 ditto ditto .	3,199	1,060	326	21	687
	„ 1886-87 ditto ditto	2,950	937	280	14	644

* Figures not available.

2. But it will be seen that paragraph 7 of the Government letter treats all of these as sales of *estates*, whereas two-thirds or more* were sales of *dependent tenures*, or sikmi talooks under the Government khas mehals; such tenures are sold under the discretionary power given by section 11, Act VII (B.C.) of 1868 as amended by Act II (B.C.) of 1871. All the *howla* tenures under Government estates in Noakhally, Bardakhat tenures in Tipperah, and transferable tenures in all Government estates everywhere, are, or might be, sold for arrears of rent and cess just as these tenures are sold in Chittagong (*see* definitions of *revenue* and *tenure* in Act VII (B.C.) of 1868).

* (643 out of 937 in the year 1886-87).

3. If therefore the present question is to lump together sales of *estates* and *shares* on the district revenue-roll with *sikmi tenures* on Board's register 33, it is obvious that to obtain a correct percentage the whole number of saleable tenures on the khas mehal rent-rolls of the Lower Provinces must be added to the number of estates (deducting therefrom the number of khas mehals). In paragraph 7 the Government appear not to have noticed this, and the 643 sales of dependent tenures in Chittagong district are included, while the figure of *estates*, taken from column 7 of Appendix I, Land Revenue Report, includes only the five khas mehals instead of the dependent tenures under them.

4. Then what is to be understood by "declared and registered incumbrances?" The Board's letter appears to contemplate selling each estate at the purchaser's risk, binding him to respect every incumbrance which he may happen to find when he tries to take possession. This would mean that a purchaser would merely acquire the liability to pay Government revenue, while he fought his way into possession by many years of litigation. Nobody but a rich and litigious person would dream of bidding under that condition, and the only result would be a sale where nobody bid, held as a preliminary ceremony before the genuine sale could be advertized: sales would increase, and Government revenue collection would be postponed to the second sale.

5. Or is it intended that a procedure like that provided in sections 161 to 167 and section 175 of the new Tenancy Act should be introduced? The dependent tenures in the Government khas mehals are being sold, as I have stated above, under a special law, for their arrears of rent and cess together, and I have no experience how these provisions of the Tenancy Act would work. It seems to me that section 162 would bind the Government to point out the exact lands to the purchaser and entitle him to claim abatement for any deficiency. Under section 165, I am afraid that a second sale would be necessary in a very large proportion of instances, because a door would be opened for defaulters to prepare all sorts of *banami* and tricky documents, which they would have notified to themselves three months before defaulting, on purpose to defraud a purchaser. This might partially be met by providing that the defaulters should attend the sale with a complete statement of the existing rent-roll, and should be bound over to give possession according to that statement; but this belongs to the subject of giving possession to an auction-purchaser, which will be noticed below (*see* paragraphs 16 and 17 below).

6. Whether any need for such a provision is practically felt is a question not easy to answer exactly. There are cases of scheming to get estates sold, in which petitions for sale and against sale are put in; and the estate in such cases is exempted on payment by the tenant in accordance with the Board's orders. No doubt in those instances the tenants feel a need for protection, but they are few—not more than three or four in a year, I think. I have no means of judging what takes place after an estate has been sold: whether the purchaser annuls interests which ought in equity to be protected or not. When the estate is large and the purchaser wealthy (as is almost a necessity), the tenants are at his mercy. Take for an example the large permanently settled estate Taraff Aura de Barrose, purchased by Baboo Nityananda Roy. He filed about 1,100 suits against the tenants, and they necessarily came to terms. What I heard was that they gave a premium and took new leases from him, but were not ousted. When the large temporarily-settled estate noabad taraff Joy Narayan Ghosal was purchased by Baboo Ram Ballab Shaha, he tried to void tenures, though to what extent I do not know: he sued a ward's estate for this purpose, and was defeated because the tenure was a noabad talook under his noabad traff, recognized in the 1848 settlement and specially protected by the law, and that, I think, checked him. It may be taken as granted, I think, that what happens is this:—The purchaser goes to the tenants and calls on them to settle amicably with him, and there is a good deal of talk; each man says "I will do it if ten men do;" and after going away and meeting again several times the matter is arranged by the tenants giving a *salame* and taking new leases at their old conditions; sometimes the tenants fight the purchaser to the utmost, and he has to let the estate go to sale again, or he has to get the Civil Court to order a survey and preparation of a rent-roll by the Collector. It depends on the relative strength and capacity for litigation of the tenants and the purchaser, and also of the late defaulters, if they are influential, whether the purchaser gets quiet possession by amicable settlement, or is put to such devices as creating new tenures over the heads of old ones, and fomenting litigation through third parties to subdue the tenants. I do not think a tenant is ever dispossessed—they are the stronger party as a rule.

7. Then it is to be remembered that in Chittagong the sale of any property large enough to be classed as an *estate* in any other district is rare. There are only 733 permanently settled estates, and one temporarily settled estate, paying upwards of Rs. 100 annual jumma; 2,847 pay over Rs. 10 and up to Rs. 100 annually, and all the rest pay less than Rs. 10 per annum. This class includes more estates paying under Rs. 2 per annum than over. The great bulk of the sales takes place in this class of petty estates, and there is no use attempting to protect tenures under them, because they have no tenures co-extensive with the estate; they

themselves would have been classed as ryoti holdings in any other district. They were formed by the settlement of 1848 splitting up every resumed lakhiraj estate into separate holdings, each *dakhal* or cultivator's holding was separately assessed and called "Mahal Bazyapti Talook so and so." The proceeding was as if all resumed lands were regarded as one Government mehal, and all the tenants found in possession were made talookdars, each for his own plot of ground. Subsequently all the talooks were put on the district revenue roll as separate estates. There are 24,379 of these Bazyapti talooks, paying Rs. 60,222-5-2 annually, and comprising about 79,598 acres of land. Usually, so far as I have seen, an *itmam* (similar to a Noakhally *howla*) or any substantial cultivator's holding will comprise plots of land out of a variety of these fragmentary "estates" along with plots of Joy Narain, noabad and Government noabad, and some revenue-free plots (there are 34,751 revenue-free properties, aggregating about 39,000 acres, similarly scattered, and the Joy Narain noabad estate, area 21,294 acres, does not comprise a single village anywhere, but consists of scattered plots throughout nearly all the districts).

8. The result of this fragmentary state of the "estates" is that when an estate is sold, in nearly every case it does not affect any entire tenure; it only affects a plot of say some *itmamdar's* much larger holding, and he has no one landlord over him, so he is independent and well able to make terms with the purchaser, who is possibly a much smaller man than himself. The estates being so small, they change hands with very slight change to any one's interest. So far as this district is concerned, then, I should say that there is no practical need for altering the law in order to protect tenants' interests under an estate sold for arrears.

9. Next whether such an object could be attained by slight modification of the existing law. It seems to me that any preliminary sale, subject to incumbrances, would prove a very tedious and elaborate proceeding, and would lead to litigation, which Government could hardly keep out of. The present sale law provides for special and common registry in the Collector's books for protection of interests, and it provides by section IX for persons not proprietors to protect themselves, and by section XV for co-sharers to protect themselves. Nobody protects himself under these sections, and I do not think any new provision will in the long run protect those who shut their eyes to all risk. The question seems to me to resolve itself into this: who is truly the *proprietor*? and who is the true defaulter when Government revenue is not paid? Formerly the *malik* or proprietor was the person who engaged with Government to pay in the assessment of the estate on the revenue-roll, or received *malikana* if he declined to engage; and this person is registered in the collectorate still as the proprietor under B. C. Act VII of 1876, but now his interest is subject to the option which any mortgagee may have of getting his interest also registered. The course of legislation has gone in favour of creating multiple ownership in the land down to the ryot. The *registered proprietor* is in fact only one of a series of owners, and yet in the event of a sale he is entitled (subject to a registered mortgagee's claim) to the whole sale proceeds, and this of course opens an inducement to the registered proprietor to get the joint stock sold that he may take the whole proceeds, or, what is perhaps more frequent, he does so by arrangement with creditors that they may attach the sale proceeds and be satisfied.

10. In some instances these "recorded proprietors" have ceased even to be liable for the Government revenue, having given putni or mortgage, with condition that the putnidar or mortgagee pays the revenue. In such case the patnidar or mortgagee might by collusion get the estate sold and defraud the "proprietor." The remedy seems not to be a law for selling subject to encumbrances, but a rule to provide either (*a*) for all interests in the land to be registered as part of the proprietary right in the estate under Act VII of 1876. Probably, the shortest way to do this would be to insist on full specification of the estate concerned to be inserted in every document regarding land, and to make Rural Sub-Registrars send intimation of every document direct to the Land Registration office for entry in the record of the estate affected; and to provide for enquiries regarding succession to registered interests. I am afraid such an attempt as this, to keep up a record of all the interests of all lands in an estate, would be so huge as to be impossible in practice (*b*), or it could be provided that after a sale the surplus sale proceeds should be held as the joint property of all persons interested in the land of the estate, instead of "the late recorded proprietors" only as at present (*see* section 31, Act XI of 1859). This appears to me to be a much more feasible proposition. It would work in three ways:—*Firstly*, it would not be worth while for a recorded proprietor, or other person truly responsible for paying the revenue, to get an estate sold in order to gain more than his share of the proceeds; *secondly*, it would look up the joint capital of all the co-owners of every degree until the money could be apportioned amongst them, thereby creating a strong common interest against defaults and sales; and *thirdly*, when an estate had been sold all parties claiming any sort of interest in the land would be obliged to come forward, and conflicting claims would be brought to an issue, so that the purchaser would get a definite rent-roll to work with; whereas at present he often has to try as many shifts as a monkey with a cocoanut before he gets actual possession, and he has to pay Government revenue all the time.

I agree as regards the impracticability of this proposal.

D. R. LYALL.

I do not agree in this either. It amounts in part to confiscation to a certain extent, and I see no means of working it fairly

D. R LYALL.

11. Under the old Regulations the proprietor was bound to keep a patwari record of the interests under him, and he had to go to the Collector for his rent law cases, so the Collector had some sort of rent record to give to a purchaser. Under the new Tenancy Act the accounts and counterfoil receipts could be called for, as they take the place of patwari accounts; they will perhaps be never more reliable than the old patwari accounts, but they will pin

parties down to a definite statement of their interests, and the purchaser will have something to go upon.

12. An alternative proposal is this: suppose the recorded proprietor of Act VII of 1876 were bound to keep a patwari account of the estate as a public accountant and make it open to objection. If his rent-roll were thus a public account, and he were able to bring his tenant's holdings to sale for arrears on the basis of that account by simple application to the Collector, as is done now for *putnies*, there would be an advantage to him in keeping his rent-roll clear of fiction, and a tolerable certainty of objection being raised against fraudulent entries whenever they tended to prejudice others. This method, like the suggestion of registering all interests under the Land Registration Act, would bring a stupendous amount of work on the Government offices.

This proposal could not be worked with the present staff, but there appears to be a possibility of working it with a large staff It would remove the dispute till after sale

D R. LYALL.

13. I think the suggestion to make surplus sale proceeds payable to all persons proving an interest in the land, instead of crediting them to the recorded proprietor alone, is the simplest and best: whether it is quite equitable is another question. It is to be considered that subordinate interests have grown up or have been acquired for a money consideration with full knowledge of the fact that they will be liable to voidance by a sale for arrears. If they had been created as interests protected against an auction-purchaser, the recorded proprietor would have received larger consideration for creating them.

This is undoubtedly the case.

D. R LYALL.

14. The neglect of tenure-holders to make common and special registry, I think, is want of enterprise. Nobody seems to have the desire to secure himself against remote contingencies when he can put it off: the chance of a sale affecting him is perhaps once in two hundred years.

15. The second proposal of the Board to Government, referred to in paragraph 2 of the Government letter, is to allow an appellant who has been unsuccessful before, the Commissioner to go to the Board on the ground of hardship. The only possible exception to be taken to this is that it would lengthen the time before sale becomes conclusive, or before any other proceeding for realizing the arrear can be taken under the final order of Government on the case. It takes so long already to advertize and hold sales and to get in the sale money, and then to credit it from deposit account to Land Revenue, that it is difficult to get the recovery booked within a year after the revenue was due by settlement instalment, and any further delay is sure to carry on the arrear into a second financial year.

The objection is a very sound one, and the additional delay would seriously affect the revenue, which is already paid very late

D R LYALL.

16. The third proposal is to amend the law as to giving possession to auction-purchasers. There is want of an amendment certainly. Section 29 is sufficient for a strong purchaser, but insufficient for a weak one. In Chittagong, in most instances, the land is a small plot, and the purchaser cannot identify it unless the tenant helps him; and he has no means of knowing whether the person occupying the land is really one of the defaulters or a tenant, or what rent he has hitherto been paying. The Collector should be bound to summon the defaulting owner and make him give in some sort of account of the estate to the purchaser, and provision might be made also for giving this possession to the purchaser's successors or assigns, and not to the purchaser only.

17. If after a sale all persons interested in the land were called to state their right to share in the surplus sale proceeds, the purchaser could be made a party to this proceeding, and allowed to ask for the ejectment of persons shown to be representatives of the defaulter. He would get the statements both of the defaulter and of the existing tenants as to the state of the rent-roll, and would be better able than at present to pay the Government jumma. The question of possession to the purchaser is closely connected with that of keeping record of the tenancies under the defaulter. Government is very often the purchaser under section 58, and there is much delay in getting actual possession and collecting rent. I think the purchaser should look to the Collector and not to the Civil Courts to give him the same possession which the defaulter had, and to compel the defaulter to produce rent-roll and kabulyats, &c.

18. The Board's paragraph 4. The case of Lala Mobarak Lall does not seem likely to have much effect. The people here are very keen to adopt High Court rulings for law, and they have plenty of small sale cases to practise on; but nobody has made that ruling the base of suit to set aside a sale. If the sale be published carefully, I do not think the Courts would upset it; but when such a flagrant error was made as to allow less than 30 day's notice, there seems no defence. Section 8 of (B.C.) Act VII of 1868 only raises a presumption as regards the posting and publishing of sale notices; but when a party can show that the notice published was an illegal one, it could not be cured by the mode of publication. It is desirable that the sale list prepared in the collectorate should be kept on record, and that the copies sent to the various offices for publication should be regular certified copies of that original or *fac simile* copies; then evidence could at once be given to show whether the contents of the notice were legal or not. At present sometimes a suit is made to set aside sale, and the Collector is cited to prove the contents of the copy of notice published in one of the Civil Courts: there is no authorised mode of proving this point for one individual estate out of a large number of lots on the list.

I agree in this, and separate correspondence is now going on on the subject

D. R. LYALL.

19. The Board's paragraph 5. The ruling to the effect that a sale in execution of a certificate must come under appeal to the Commissioner under Act XI of 1859, and that it does not come under section 311, &c., Civil Code, is certainly a hardship, and in the face of section 19, Act VII of 1880, it is not intelligible. I think the ruling should be disregarded.

20. The Board's paragraph 6 and paragraph 6 of the Government letter—(1) Whether zemindars should be allowed to register the names of their putnidars as liable for the Government revenue. By zemindar I understand registered proprietor. Suppose a case as follows:—

A is the recorded proprietor, paying a jumma of Rs. 100 for 100 acres of land. He creates a putni of 25 acres of land, the B putnidar to pay the Government revenue of Rs. 100 direct to the treasury. Is it proposed that A should relieve himself and his 75 acres of land from liability by registering B's putni as liable? The Government letter appears to me to mean that A should not be relieved of his liability, but that he should have a notice registered in the towji office to the effect that, in case B defaults, information of the fact should be sent to A.

This appears to me to be rather trenching on the duties of a Revenue Agent. A is entitled under the Board's Rules to information of the state of his account without fee on applying for it. If he wants to watch the proceedings of B, I think he should employ an authorised Revenue Agent for such purpose. If the towjinavis be responsible to send out notice to A by post, it is inevitable that allegations of collusion between him and the putnidar would be made if a sale took place. I think the proprietors of all grades should be left to look after their own interests, and not in any way encouraged to suppose that Government can regard A's interest as something distinct from B's, or can interfere if they seem to be cheating one another. The one estate must be liable for the revenue, and the whole body of co-owners is one person; wilful default by one of them is the default of all; and there would be no end of intervention if the Collector had to consider what one said to be the fault of another. The Collector cannot tell whether B or A is truly liable to pay us between themselves; and if such interference were made, Government would certainly become a party to the litigation between them. A reference to Board's circular 4 of January 1886 will show that proprietors sometimes create as tenures what are nothing more nor less than rent collecting agencies of their own; they will easily find means to evade personal liability for arrears if they be allowed to set up some man of straw as the person bound to pay in Government revenue.

I have given my opinion on this in my letter.
In making proposals like this, Government must bear in mind the work of district officers, and should be very chary of increasing their work.
The Collector's objections are good and strong in my opinion.
D. R. LYALL.

(2) Whether the law should recognize a right of any person to pay in arrears after the latest day. Obviously there would not be any 'latest day' if any one whatsoever had a statutory right to pay after that day. To give an example: By far the largest number of estates here are bound by their settlement *kistbands* to pay the revenue of 1294 B. S. in the last quarter of that year (= January to April 1888). Permanent settlement was conceded on the express condition of punctuality in payment. These revenues become arrears of revenue according to the definition in section 11, Act XI of 1859, on 1st Baisakh 1295 at the latest, and on earlier dates in many cases. Then under section III of the Act a legal latest day of grace is given for payment of all arrears, and it is enacted that in default the estate "shall be sold to the highest bidder." This period of grace is 25th June following, *i.e.*, three to five months after the settlement *kist* was due. Sale proclamation work takes so long that sale cannot be held before November 1888; after that two months must elapse before any sale can become conclusive, and the Collector is lucky if he can get the revenue credited before 31st March 1889, which was mostly arrears a full year before that date. What is the use of fixing 25th June merely with the object of providing that any person who likes may pay *after* that date? It is necessary for the revenue to be paid once every twelve months at least, and giving more time, and more time, is merely giving away one year's revenue.

This is absolutely true. The last day is already unduly extended, and it is, I fear, often forgotten how long after the due date of payment the "last day" has already been fixed.
D. R. LYALL.

22. The simplest plan will be to make 1st Baisakh 1295 the fictitious "latest day" for all payments of 1294, and begin the sale notices at once after that day. As soon as sale day is fixed, there is a real, 'latest day,' and that is all the Collector wants for collecting his revenue. Three provisos, however, should be made—

1*st*, that no exemption from sale should be claimable within six days before the sale day.

2*nd*, *that all Government demands due by the defaulter* must be paid as a condition of exempting any estate or share after the legal latest day. The reason of this is that in very numerous cases a defaulter owes a variety of revenue arrears over and above what there may be due from one given estate—he has perhaps half a dozen properties on the sale list, the last five of which he knows nobody will bid for, and he wants them sold merely to evade creditors by buying them in *benami* for the bare arrear due on them (or less if possible), while the first estate is sure to be keenly bid for and fetch a high price—he asks the Collector to exempt the first lot on payment of its arrear of revenue only, while the Collector wants him to pay for all six, and also all cesses and other revenue demands due from him on various certificate cases, and zemindari dâk cess, &c., &c. If lot 1 be sold its proceeds will cover everything, and the other five lots will then be exempted; but if lot 1 be exempted, these other demands will not be recovered, and the other five lots will be sold for nothing above their bare arrears. Such scheming persons are common here, and they try to rush the Collector and to get exemption on the very last day before actual sale day, in order to leave no time for ascertaining from the various departments what other demands there are for collection.

3*rd*. The third proviso should be that the Collector should require evidence from the petitioner to satisfy himself of the truth of the petition for exemption. This proviso also is a necessary one, and it is the usual preliminary condition of exemption here at present. Formerly the petitioner had to bring evidence, usually two witnesses or so, whose statements

were recorded by a Deputy Collector, before order for exemption was recorded. It cost the defaulter about a rupee to do this, and wasted half an hour of a Deputy Collector's time; but some check on false statements was very necessary, and the slight penalty on defaults was an advantage. I altered the procedure to a small extent by requiring the petitioner to furnish an affidavit on one rupee notarial stamp, which is simply sworn before one of the Deputies. It costs the petitioner about the same in coin and less in delay, and it saves the Deputy Collector's time, and the rupee goes to the stamp revenue instead of fructifying in the pockets of the *cutcherry* witnesses. Of course a Collector deciding on a petition for exemption has no case before him in which he has power to call for affidavits, but he is bound to satisfy himself of the genuineness of the petition, and it is a matter of mutual convenience to take summary evidence in that form. It has a further advantage, namely, that these formal declarations enable me to see where changes of donorship have taken place, and have not been registered in the Land Registration Department. The affidavit states—first, who is the *mahk* of the estate; second, the circumstances under which the arrears could not be paid before the legal latest day; and on this being done, the order for exemption is made, giving a limited period within which all demands must be paid in; third, whether the right to claim exemption may be conceded, subject to the payment of a fine or penalty. As has already been remarked, latest day is not a latest day if a right to claim exemption after that day is conceded. A penalty would certainly be required, and Act XII of 1841 distinctly prohibits any levy of money penalty on an arrear; besides this, if any percentage were levied, it would become exceedingly difficult to check the accounts or to calculate the correct demand. This difficulty exists in the Cess Department, where interest on arrears is demanded, and I should be glad to see it done away with there. In Chittagong the properties are small, and the cost of making petition on 8 annas stamp, and furnishing an affidavit, acts as a penalty which is most useful. If a penalty is to be introduced, I think that it should be made (*a*) subject to a minimum, all fractions less than a rupee to be taken as a rupee; (*b*) taking the full instalment of revenue arrears which should have been paid in before the given latest day: a single rate of penalty should be levied on a default of a small sum (say quarter of the instalment and under) only if exemption be prayed for within say 30 days of the legal latest day. A double rate from 31st to 60th day, treble rate from 61st to 90th, and so on for a larger default, say over quarter and up to half of the instalment; two rates of penalty for the first 30 days, four rates for the second, and so on. By this means some inducement would be kept up to make defaults as small as possible, and to come forward for exemption as soon as possible; and yet there would not be an intricate calculation as of interest. Separate minimum rates of penalty might be fixed, *e.g.*, Re. 1 for estates paying Rs. 10 and under annual revenue; Rs. 2 for estates paying Rs. 10 to Rs. 50 annually, and so on. If the same estate defaulted a second time within ten years, the minimum should be doubled, and if a third time trebled, and so on, so that it would come expensive to default repeatedly for the entire year's revenue, as is here rather the rule than the exception. Here in Chittagong it is the smallest mehals which default; and now that exemption is claimable under the Board's orders at any time up to sale day, I find that these estates almost invariably default for the entire year's jumma, and exemption is most frequently not asked for until sale-day is coming near; that is, nearly a twelvemonth after the money was due according to the settlement instalment. In fact, under the present system, the Board has virtually given up one year's revenue of the estates below Rs. 10 annual jumma. They were bound by settlement to pay in Pous of 1294 (=December 1887) the revenue of that year, but we are prohibited from showing it as a *demand* of revenue in return No. X in the year 1887-88 at all; and if a man pays it even up to 31st March 1888, when it is three months* in arrear, it has to be booked as an *advance* collection of money not yet due, and the payer takes a receipt styling it *advance*; so no credit is gained by collecting it, and punctual payment is discouraged; it is shown as *current demand* of 25th June 1888, because that is the legal latest day for paying the arrear. Sale-day comes about December 1888, and as the Board insist on unquestioning exemption to the last possible moment, it comes about that those who are bound by their agreements to pay in December 1887 find it simplest to leave the entire revenue of the year unpaid until December 1888, and then claim exemption when sale is near. I used to decimate them by refusing absolutely to exempt in cases in which defaults were wilful, and so for a year or two the defaulters became a little nervous, with good results. After I had rejected the petition, they often got exemption by petition to the Commissioner, which acted as some additional penalty, but from the time when the Board issued orders insisting absolutely on exemption, the defaults began to increase again.

This is certainly a blot in the cess law; there should be fixed penalty, and not interest.

D. R. LYALL.

I do not fully agree with Mr. Manson, but at the same time there is no doubt that the existing orders, which work fairly in other districts, throw much additional work on the Collector of Chittagong. The circumstance of the district differ so much from those of all other that general orders can hardly be carried out.

D. R. LYALL.

4. Whether notice of default should be given by registered letter and under what conditions? Some persons might benefit by a rule that a person who paid for the privilege should have a statement of account sent to his address by registered letter: for example, absentee proprietors and lessees, who cannot easily apply under rule 4, section VI, chapter XI, Board's Rules I, at the towji office, might find this convenient, but very few there are likely to be so provident as to pay beforehand. It would be quite useless to send notices of this sort as a general rule to all defaulters, because the towji, where the revenue is booked, does not know the names of proprietors; the towji clerks keep the ledger by numbers and name of estate, and have no concern with names of proprietors. Since it is often the "recorded proprietor" who

wants the estate to go to sale, and persons of whose interests the Collector has no sort of knowledge are the men who would benefit by such a notice, it would be useless to write to the "recorded proprietors" informing them of their own default.

23. Some good could undoubtedly be done by a better method of publishing lists of defaulting estates, but this requires a classification of estates by geographical and not by alphabetical arrangement; also by dividing the class of estates paying less than Rs. 10 annually. That one class takes in nearly the whole number of estates in the district, and so it is really no classification.

24. It is the practice to take a separate application for exemption of each estate. To reduce petitions, three estates are allowed to be entered in one petition if 8 annas court-fee for each is affixed, and by this means a defaulter, with a batch of three estates in arrear, gets exemption by paying Re. 1-8 for the application and Re. 1 for the affidavit; whereas a defaulter for one estate pays 8 annas for the application and Re. 1 for the affidavit: not more than three are allowed in one petition, and it would be more regular and more equitable to insist on a separate case for each estate. The present practice arose from a desire to let defaulters down easily, as much as possible. Postcards are sent to the address of the best known of the proprietors, intimating the arrear when it is only Rs. 3-2 per cent. of the sum due, and whoever comes to pay such arrear with the postcard to show is exempted without requiring any affidavit as a matter of course.

25. Paragraph 7 of the Government letter ask whether arrears of cesses could reasonably be recovered by sale. There is a correspondence going on about payment of revenue and cesses by revenue money-orders, in which a difficulty has arisen from cesses and land revenue being entered in the same money-orders. The books of revenue and cess are kept by different departments, sitting in different buildings, and, what is more, the estates are classified on a different system in the two offices, and for cesses interest is payable, while for land revenue it is not. If cesses and land revenue were entered in the same books, a considerable separate establishment could be done away with, and the difficulty about money-orders would disappear. To recover both by one proceeding under the sale law would save some thousands of certificate cases. For arrears of cesses a certificate is made against one or more of the co-proprietors who may have defaulted entirely, and not against those who have paid something, and it is rare for immoveable property to be sold in execution. The Government appears to be under a mistake in supposing that cesses are paid with the revenue, and that the estate is sold for arrears of cess under certificate procedure.

See this office No. 1788G—XIX—27, dated 19th and 23rd January 1888, in reply to your No. 8190 C.—X—14, dated 31st December 1887.

26. Cesses are *revenue* by the definition of section 1, Act VII (B.C.) of 1868, and therefore their arrears are *arrears of revenue* under section 2, Act XI of 1859; so there is no difficulty, I suppose, in selling estates for arrears of cesses; and revenue-free properties are "tenures" under definition, so they also could be sold for arrears of cesses at the Collector's discretion under section 11, Act VII of 1868 as amended. If the demands against an estate for cesses were shown in the same book as the demand for land revenue, one man would receive both together in one *challan* instead of two men separately, and the payment would be facilitated: one sale proceeding would suffice for both demands. I think there can be no question it is in the interest of everybody alike to simplify procedure in this way.

The Collector's law appears to be correct, but it is not usual to sell for arrears of cess, and were it to be ordered to be done, there would be a very general howl. Still the law is as the Collector states it to be.

D R LYALL.

27. I have the following suggestions to offer on the subject of sale proceedings:—

1*st*. Revenue agents, if they did their duty, would be a great help to the Collector in avoiding sales. I think that the certified revenue agents should have a public room to which the Collector might furnish copies of the defaulters' lists after a legal latest day with good effect. It would encourage proprietors to apply, through authorised revenue agents, instead, as now very often happens, of their trusting to irresponsible persons to find out in the towji office what is due and what estates are for sale.

The second suggestion appears to be more workable than this

D R LYALL.

2*nd*. The publication of the sale list under section 6, Act XI of 1859, might be made very much more effective by classifying the estates on the towji in geographical divisions, and by having copies of the list made for sale to those interested, or for distribution, as it would probably not cost much to print. Some method of making the copies by mechanical means is highly desirable, because those published are liable to be impeached by appellants: if they were *fac simile* of the original sale list in the Collector's office on which sale is held, there could be no dispute whether a certain lot had or had not been correctly described and put to sale. Bidders also would be much better able to follow the sale if they could see what estates in each *mouzah* were on the list. At present nobody can learn this without going through the whole list for the entire district.

Vide note against paragraph 18. The proposal appears to be a sensible one.

D. R. LYALL.

3*rd*. Estates paying less than Rs. 2 annual demand might, with advantage, have a different latest day from those paying over Rs. 2 and up to Rs. 10: this would divide the heavy crush of book-work which comes now all on 25th June. More care in comparing *challans* and fewer mistakes would be the result, and, moreover, it would be easier for parties to get information of the state of their accounts if there were not such a crush as prevails now.

I think this should be done in Chittagong. It is not necessary in other districts, where the same difficulty is not experienced.

D. R LYALL.

4th. The towji office keeps no names of the recorded proprietors, but the Board's rules make it necessary that these should be furnished by the Land Registration Department before sale proceedings can be published, and this delays the work for many weeks. If the names of recorded proprietors are necessary in publishing sales, the towji office should keep the information, and not the defendant in another department to compile it afresh after every latest day. If estates were accounted for by geographical classification, they would come up for sale in that order; and the result would be that the first days of a sale in which estates of Zorwargunge stood at the top of the list would be attended by bidders of that quarter; when Putia estates began to come up, the bidders of that quarter would appear, and so on. At present a man may have to wait a week if there are two lots at different ends of the sale list which adjoin his property and he wants to bid for them. Sales would be in this way localised, and lots would be fully identified by their name and number and *jumma* without reference to names of recorded proprietors: these last are always changing, and are by no means correct, since persons in possession commonly fail to register their names.

The proposal is a sensible one, and the sooner the alphabetical arrangement is given up, the better.

D. R. LYALL.

5th. The question should be settled whether Chittagong is a permanently settled district in which an auction-purchaser acquires rights under section 37 of Act XI of 1859, or a district not permanently settled, in which he comes under section 52. A case in which a purchaser of a temporarily-settled estate was held to come under section 37 will be found in Indian Law Reports, July 1887, page 445 (Bhola Nath *versus* Uma Charan).

The district is partly permanently settled, partly not. As regard *taraf*s it is permanently settled; as regards *noabad* tenures it is not.

D. R. LYALL.

No. 858RG, dated Burdwan, the 24th March 1888.

From—N. S. ALEXANDER, Esq., Commissioner of the Burdwan Division,

To—The Secretary to the Board of Revenue, Lower Provinces.

IN reply to your No. 1141A of the 16th December last, as to the proposed amendment of the sale law, I have the honour to report as follows.

2. I do not think the fact that tenure-holders have neglected to avail themselves of the protection afforded by the registration provisions of Act XI of 1859 need cause much surprise when we see how many proprietors have allowed their shares in estates to be sold through neglecting to open separate accounts. No legislation in the world will make a people business-like and practical. The agricultural and country gentleman class in all countries is not much given to the observance of legal forms, and this is more so the case in India than elsewhere. During my long experience as a Collector and Commissioner, I have heard of but few cases in which any real hardship has occurred owing to an incoming purchaser cancelling the existing tenures. The cause may be the same which leads to so much subinfeudation in Eastern Bengal—the feeling of security and ease entailed by having good substantial men between the head landlord and the actual cultivators of the soil. Even Government with all its prestige and power comes off second best when it has to deal with a large body of actual cultivators of an estate. I am writing of course of Bengal, not of Behar or Orissa, of which I have had little practical experience.

3. Mr. Oldham, Collector of Burdwan, is of the same opinion. He writes:—"I have not yet found an instance of under-tenures having been declared void after a sale. I have made enquiries both in my own office and at the local civil courts."

4. I think that there is no necessity to encourage the system of subinfeudation, which is already too common in Bengal. This would be the case were estates to be put up to sale subject to encumbrances. Every landlord who has not gone in for putni taluk and other forms of tenures would immediately do so.

5. As to the case of Lala Mobaruk Lall. Such cases as this are not very common; but a much commoner and more unavoidable irregularity which a Collector is likely to perpetrate is the non-issue of the notice required by section 5, as he is frequently quite unaware of a particular estate being under attachment by order of a court, no notice being given to him of the attachment, notwithstanding the express orders of the High Court that such notice is to be given. It appears to me that the ruling in the case of Lala Mobaruk Lall will hold good in this latter class of cases. I think section XXXIII should be revised so as to provide clearly that no suit will lie to set aside a sale under Act XI of 1859, except after an appeal made to the Commissioner. This might be ensured by requiring the institutor of the suit to file a copy of the Commissioner's decision with his plaint. The time within which the suit might be instituted might be fixed as one year from the date of the decision of the appeal by the Commissioner.

6. As to the case noted in Board's circular No. 3 of 1887, I beg to refer to an opinion given by my predecessor, Mr. Wilson, in his letter No. 370RG, dated 16th August 1887, to the address of the Secretary to the Board of Revenue, and to my letter No. 373, dated 5th December 1887, also to the same address. It is no doubt a great hardship that a poor man who has had a few bighas of land sold under a certificate issued, say, in a Midnapore subdivision, some hundred miles off (six or seven days' journey there and back), should have no nearer court of appeal than that of the Divisional Commissioner stationed at Burdwan. As Mr. Wilson says, in such cases it amounts to a total denial of justice.

7. It is already the practice in most districts to despatch by post a postcard warning landholders of arrears being due in the case of small sums which are likely to have been overlooked. Neither do the Collectors whom I have consulted, nor do I, consider that any other action on the part of Collectors is called for. In the case of large arrears it is presumed, and I think rightly so, that the neglect to pay them in is not the result of a pardonable oversight: if not actually intentional, it results from gross carelessness or inexcusable neglect of the commonest businesslike precautions. It will add much to the work of the already overworked establishments of the Collectors to require that notice of defaults should be given in all cases by registered letters. Many land-owners who now pay punctually would cease to do so, and having a latest day of payment would be a farce. Everyone would wait for the expected registered letter. I do not see how the right of any particular person to pay the arrears after the latest day of payment could be recognized by law, for, as far as I can see, no such right could be granted to any special class of landholders to the exclusion of others. I think that the class of zemindars who give their estates out in putni, and cease to be landholders in almost all except the name, should be the last to be favoured by any such regulation as would admit of their shirking one of the few responsibilities left to them; nor would I recognize the *right* of any one to pay in after the latest day of payment. Special exemption from sale should continue to be, as it now is, a matter of grace, granted for very special reasons as required by section XVIII. All that is required is that special rules should be framed for the guidance of Collectors in such cases. Such could without much difficulty be collected out of the Board's circular orders and decisions. Four pages of these are given in Mr. Grimley's notes to section XVIII, pages 47 to 51. If any Collector did not in any case carry out the instructions conveyed in these rules, application could be made to the Commissioner under section 18, or if a sale took place it could be set aside by Government under the provisions of section 26.

8. The provisions of the law as they exist appear to me to be just and equitable. It is the way in which some Collectors administer the law that causes hardship and discontent. Some Collectors on *principle* will never admit any tender under section 18, always finding some excise for rejecting the petition. Others find it too much trouble to receive and decide such petitions on the dates they are presented. The stereotyped order is passed—"Let the sherista report." The sherista, unless its palm is well greased, does not report probably till just before the sale commences, when the turmoil caused by a large crowd of bidders and lookers-on, &c., prevents the harassed Collector from giving any attentive hearing to the petition, which is in 99 cases out of a hundred rejected summarily.

9. The only practical point to consider is how to prevent a large number of petitions being put in just before the sales commence. If several hundred petitions are put in a few hours before the sales commence, it is manifest that no Collector can deal with them properly and also conduct the sales. It was this that led to a large number of sales of petty estates for petty arrears in Burdwan last year. The Collector issued postcards drawing the attention of the defaulters to the arrears, and calling on them to pay up or on before the day of sale. The result was a rush of several hundred defaulters, who came in, just before the sales commenced, with tenders of the arrears due. The Collector rejected these applications *en masse*. The sales had subsequently to be annulled by Government under section 26. I would propose that the rules should lay down that in the case of arrears of sums of Rs. 10 and under, the Collector should issue a post-card to the defaulters, calling on them to pay up by a given date not less than seven days prior to that fixed for the sales, and that any petitions should be received by the Collector or Deputy Collector in charge of the Collector's office, who should at once pass orders on the petitions. The order would be a very simple one, *e.g.*, "amount tendered, if correct, to be accepted and the estate to be exempted." The report as to whether the amount is correct or not should be laid before the Collector not later than the day previous to the sale day, so as to admit of the parties paying in their money into the treasury that day; so that the treasury challan might be obtained to be shown when the estate was brought up for sale. This rule would be only necessary to meet cases such as those which occurred in Burdwan in June last year. In ordinary cases there would be plenty of time for the Collector to receive the report and pass orders exempting an estate, provided he saw to the matter himself and did allow the petition to be delayed too long in the sherista. To enable Collectors to keep such cases in view, a special register of petitions made under section 18 should be kept in English in each office, giving—

(1) Name of petitioner.
(2) Date of petition.
(3) Abstract of petition.
(4) Preliminary order passed by the Collector.
(5) Date of report (if any) of the sherista.
(6) Final order.

In these cases having to pay for an eight annas stamp for the petition, and probably to pay the fee of a revenue agent, as is now done, would be sufficient penalty.

10. In the case of arrears of higher amounts the Collector might, I think, be allowed the discretion of imposing a daily penalty of 1 per cent. per diem on the amount in arrears for each day's delay in tendering the amount, commencing from the latest day of payment. The enforcement of such a penalty once or twice would very soon put a stop to any systematic neglect or carelessness. Collectors often now refuse a tender on the ground that this is the second, third or the fourth time this estate has defaulted during the past two years. This was

the case recently in Midnapore, where the Collector brought an estate to the hammer avowedly because the proprietors had defaulted several times during the past two years, and because he said this practice was becoming too common in his district, and an example *must* be made, the estate in question being selected as the frightful example. In a case such as this, if the Collector could have imposed some such penalty as that proposed by me, he would not have probably had to go to the extreme length of selling an estate to make an example to deter others. The practice of requiring a separate application on eight annas stamp paper in the case of each estate in arrears is universal in this division.

11. Sufficient time has not been given to get a full opinion from the zemindars as to the question of making the cess demand realizable under the sale law; but such as have been got are given by me appended to this report. Large and solvent land-owners, such as Raja Peary Mohun Mookerjee of Utterpara, would have no objection; but the bulk of land-owners, I am convinced, would, if polled, dissent from the proposal.

Extract paragraphs 9 and 10 from Burdwan Collector's No. 1963G, dated the 4th February 1888, to the Commissioner of the Burdwan Division.

PARA. 9. As regards the proposal to make the cess demand realizable under the sale law, I have consulted the twelve most prominent *sudder malgoozars* in this district, including the managers of the Burdwan Raj estate. From three of them only have I obtained replies, though the rest have been reminded on the subject. From what I know of the nine gentlemen who have not replied, and also judging by the replies received, I feel assured that the question is not thought by any means a vital one, and that the zemindars consulted are quite content to leave its decision in the hand of Government, and to abide by the opinions given by those few who have taken the trouble to offer them. For the Burdwan Raj estate I am left to reply myself as its managing Collector.

10. The most important opinion I have obtained is that of the Hon'ble Raja Peary Mohun Mookerjee. It will be observed that it embodies that of the aged Baboo Joy Krishna Mookerjee, who is by far the ablest landholder in this district.

The Raja writes as follows:—"I beg to state that it would be a great relief to landlords if the cesses be made recoverable under the procedure of the sale laws. It is a matter of general complaint that the certificate procedure entails upon landlords an additional burden in the shape of interest and costs, which most of them cannot make light of, while the small price fetched at sales of the right, titles, and interest of defaulters is a source of serious loss to them. The very fact that more than 80,000 certificates had to be issued in a single year is enough to show what an amount of harassment and useless cost might be obviated if the procedure for the recovery of arrears of cesses be altered.

"I would mention, however, that it is a great convenience to most landlords to be allowed to pay these cesses 15 days after the last date for the payment of revenue, and it would be very hard if the two were made payable at the same time." I venture therefore to suggest that the cesses be made payable without interest before sunset of the 15th day after the last date for payment of revenue, and that arrear of cesses be made recoverable under the procedure of the sale laws, without any notice being served upon defaulters. I humbly think that such a procedure would not only be most welcome to the landholders, but that it would also be a great saving of time and trouble to district officers.

"I wish to add, in conclusion, that my father, Baboo Joykissen Mookerjee, entirely concurs in these views."

Baboo Chakan Lall Sing Roy, the senior representative of the Chackdighee family, writes:—"I beg to say that in case the sale laws are modified in the direction of making them less stringent, I do not see any objection, on the ground of expediency, to extend the revenue procedure under the Cess Act of 1886. If by paying the cesses together with the Government revenue the sunset law is not observed with regard to it, I have not the least objection to it."

Syed Sadaruddin Ahmed of Bahar writes:—"I beg most respectfully to submit to your honour the following humble suggestion of mine: That the system of realizing the cess along with the revenue is in reality very troublesome and mischievous to the land proprietors, and this, if it ever takes place, will break down the permanent settlement. To this system I cannot give my assent.

"The certificate procedure, though somewhat expensive, yet is of great advantage to the land proprietors, as they get more time for their dues, and, moreover, it is a safeguard against any blunders.

"As regard the selling system of lands, I beg to state that a change should take place. The system is useless. The real price of the property is not realized. The sale should take place like that of the revenue system."

Most of this gentleman's property is unresumed *ayma*. Free-holders always show a much greater dread of the "sunset law" than the landholders who have to comply with its provisions. On behalf of the Burdwan Raj estate, I would welcome the adoption of the proposal as a boon, and I think that the opinions quoted by me show that it is not unacceptable to the zemindars of the district.

Extract from Bankoora Collector's No. 1178*G, dated the* 25*th February* 1888, *to the Commissioner of the Burdwan Division.*

SOME of the principal zemindars of the district, whose opinions I invited with reference to the change proposed in this paragraph, inform me that they are against it, for the simple reason that the "sunset" provision of the law seems to them to be too stringent to call for further extension. I think an intelligent zemindar of a solvent estate would have no objection to adopt the proposal to make the cess demand realizable under the sale law, for in that case he will be relieved of a considerable expense incurred in the observance of the formalities necessary thereto.

Extract from Midnapore Collector's No. 3057*G, dated the* 1*st March* 1888.

PARA. 7.—As regard the proposition to make cesses recoverable under the sale law, I have consulted some of the more intelligent of the land-owners of the district, and I gather that they are not averse to the idea, but would safeguard it by applying section 174 of the Bengal Tenancy Act.

Extract paragraphs 2, 3, *and* 4 *from the Hooghly Collector's No.* 2368, *dated the* 15*th March* 1888.

PARA. 2.—Out of ten of the principal landholders of this district who have been consulted, the five noted in the margin (*a*) are entirely opposed to the proposal to make cesses realizable under the sale law, and regard it with the utmost alarm. Four (*b*) are are not opposed to it, provided the cesses be made payable 15 days after the dates fixed for payment of land revenue; while Baboo Eshan Chandra Mittra, the Government Pleader, thinks the proposal could only be admissible by a thorough recasting of Act XI of 1859.

(*a*) 1. Chandra Kanta Mookerjee.
2. Hem Chandra Gossain.
3. Sotto Doyal Banerjee.
4. Anurup Chunder Mookerjee.
5. Nondu Lall Gossain.

(*b*) 1. Abhoy Charan Nundi.
2. Opendra Narain Nundi.
3. Peary Mohun Mookerjee.
4. Joy Krishna Mookerjee.

3. My own opinion is that, as cesses are a Local or Provincial, and not an Imperial, demand, the same law should not be applied to both. The difficulty in realizing cesses is not in respect of the large zemindars, but of the petty aymadars, rent-free holders, and lakhirajdars, whom the sunset law would not touch, though it might ruin some of the smallest zemindars.

4. On the other points raised in the Board's letter I do not venture to offer an opinion.

No. 108R, dated Rampore Beauleah, the 25th April 1888.

From—E. E. LOWIS, Esq., C.S., Commissioner of the Rajshahye Division,

To—The Secretary to the Board of Revenue, L. P., Land Revenue Department.

WITH reference to the Board's letter No. 1141A, dated 16th December 1887, and its enclosures, on the subject of the proposed amendment of the Sale Law Act, XI of 1859, I have the honour to report as follows.

2. *Paragraph* 2, *Board's letter.*—The district officers of Dinagepore, Rajshahye, Pubna, and Bogra report that no need has been felt for such a provision as that of putting up estates to sale subject to encumbrances. The district officers of Rajshahye and Bogra are of opinion that such an alteration in the Sale Law would lead to the creation of fictitious tenures, such as are referred to in paragraph 3 of the Government letter No. 3580—1258L.R., dated 29th November 1887, to the Board. Mr. Marindin, the Collector of Dinagepore, however, considers it desirable that "in the first instance estates should be put up to sale subject to all encumbrances, whether declared and registered or not, the rights of Government being protected by the power to avoid encumbrances if the bidding at the first auction is not sufficient to cover the arrears. The fact that most estates are sold with the acquiescence of the proprietors would seem to be sufficient security against the creation of fictitious tenures and mortgages, as if a proprietor intends to bring his estate to sale his interest is to get as high a price for it as possible. On the other hand, a uniform practice of putting up estates to sale subject to all encumbrances would tend to defeat the endeavour of unscrupulous proprietors to let their estates go to sale for the express purpose of avoiding encumbrances. This object may be attained by modification of section 37 to the above effect."

The Collector of Rungpore, however, considers that the need of such a provision has been practically felt in his district. He reports as follows:—"I am informed that the late proprietor of one of the largest estates in this district deliberately defaulted, and allowed the estate to be sold, in order to get rid of the unregistered tenures which he had himself created, and by granting which he had realized large sums. The arrear for which the estate was sold was only Rs. 215, and it sold for Rs. 17,000. The estate was brought in by the proprietor's muktear, who afterwards restored it by a deed of transfer. The only tenure registered was the smallest in the estate. It is obvious that such conduct morally amounted to swindling, although it could not be dealt with by the criminal courts. It appears decidedly anomalous that such acts should not only be practicable, but also perfectly legal, as would appear to be the case at present."

In this division sales for arrears are rare, and such cases as the one alluded to above but seldom occur. The practical need of some relief to the holders of subordinate tenures therefore has not forced itself on the notice of district officers, but the existence of one such abuse of the law as that quoted by Mr. Collier calls for reform, and there is no doubt that in districts, like Chittagong and Backergunge, where subinfeudation has attained considerable dimensions, the present provisions of the law press hardly on many. The question is whether relief could best be afforded by selling estates subject to encumbrances, or by some modification in the existing law as to registration of tenures. I am inclined to accept the latter remedy.

3. It appears probable, as pointed out by Government, that to sell estates subject to encumbrances will afford a temptation to landlords to create fictitious tenures for their own benefit—a temptation which the desire to obtain the best price for their estate (an argument adopted by Mr. Marindin) will do little to counterbalance. The price fetched by estates sold as proposed will in any case be low, and the creation of fictitious tenures, the existence of which will not be known at the time of sale, will do little to depreciate the value of the estate. On the whole, therefore, I am inclined to support the alternative of making registration of tenures easier than at present.

4. It is quite true that the provisions of Act XI passed for their benefit have been but little availed of by tenure-holders, but this may be accounted for by the limit of time prescribed within which registration must be effected. When I was in charge of Chittagong I was struck with the enormous disproportion between the number of tenures and the scanty entries in the Collector's register. I was at some pains, in conversation with the talukdars and others, to discover the reason for this, and I was informed that the great majority of the tenures held immediately under the landlords are of old standing, and that they cannot now be registered owing to the period of limitation prescribed in Act XI and Act III; that at first the benefit to be derived by registration had not been properly understood, and that many talukdars would now register if they could. It was further pointed out that in recent creations the landlords who are averse to registration often decline to grant talukdari leases unless the lessee binds himself not to register. I do not quite understand why the time limit was ever imposed, and from what I could gather it appeared that, in Chittagong at any rate, but for such limit registration would have been numerous. I could not discover that the power to oust unregistered tenure-holders by auction-purchasers was at all freely exercised, but in the event of a sale every tenure-holder has, I believe, to pay a *nuzzur* to have his holding recognised by the in-coming purchaser. The demand of *nuzzur* in such cases I was informed is a common custom.

5. *Board's paragraph* 3.—All the district officers, except the Collector of Pubna, are of opinion that when a Commissioner dismisses an appeal, and does not exercise his power of reporting the case under section 26 to have the sale set aside on the ground of hardship, it is desirable that the appellant should be allowed to represent the matter to the Board. In this view I entirely concur. Where definite rules for the guidance of officers cannot be laid down, and a certain discretion has to be allowed, it is of the utmost importance that the proper exercise of such power should be open to supervision and check by the Board of Revenue and Government.

6. With regard to the amendment of the law regarding giving possession to auction-purchasers, the district officer of Dinagepore suggests that the Collector should not be called upon to give possession according to the survey map, but should only proclaim the possession of the auction-purchasers of the estate as borne in the revenue-roll against the former proprietor, any disputes in connection with the boundaries and area of the lands being dealt with in the civil court. He accordingly suggests that section 29 of the Act may be amended by omitting the words "by removing to and," so as to remove all doubts at present entertained. The district officer of Rajshahye would have the law amended, so as to give the auction-purchaser possession according to the survey area of the estate, while the district officer of Bogra suggests that, "in addition to what is said in section 29, a clause should be inserted in the proclamation prohibiting ryots from paying rents to anybody except the auction-purchaser, and it should be clearly stated how any person refusing to vacate will be removed." It appears to me that the view taken by the Legal Remembrancer of the law as it stands is the correct one, and that that interpretation should be upheld, and, if necessary, made clear by legislative enactment.

7. *Paragraph* 4 *of the Board's letter*.—The district officer of Dinagepore is not in favour of modifying the law in this respect, as the limitations of section 33 were probably not intended to apply to a sale void *ab initio*. The district officers of Pubna and Bogra would have the law so modified as to make the sales of estates final if not appealed against, as is the view expressed by Government in paragraph 4 of their letter No. 3580—1258L.R., dated 29th November 1887, to the Board. The district officer of Rungpore, in view of a sale case in his district which had been confirmed by the Commissioner and the Board, and which was recently reversed by the civil court and damages given against Government, is of opinion that the jurisdiction of the civil court to annul sales should be taken away, and increased powers be given to the revenue appellate authorities to deal with cases of hardship. I do not myself anticipate any practical difficulty to result from the High Court decision referred to. There is no reason why the rule providing that 30 clear days must elapse between the posting of the notice and the sale should ever be transgressed, and if it is once understood that the serishtadar and nazir of the collectorate will be held personally responsible for the due observance of the rule, there is little fear of neglect.

8. *Board's paragraph* 6 (1).—Almost all the district officers are of opinion that the zemindars should not be allowed to relieve themselves of liability by registering the names of their putnidars as the persons responsible for the payment of revenue, since they are alone directly liable to Government for their revenue.

It seems to me that the suggestion made by the British Indian Association has been misunderstood That body, as I understand, do not wish to avoid the liability to pay Government revenue, but wish a rule to be passed, enjoining on the Collector the duty of giving immediate notice of default to those proprietors who have let their estates in putni, and made the putnidar immediately responsible for payment of Government revenue, and who have duly notified to the Collector the fact of the putnidar having assumed the responsibility to pay To this there does not appear to be any objection, the security of Government revenue, to which alone we need look, is not endangered by such concession, nor any great extra trouble thrown on the Collector.

9 *Board's paragraph* 6 (2).—All the district officers are unanimously of opinion that the law should recognize the right of any person to pay in arrears after the last day of payment. In this I entirely concur. The stringent provisions of the Sale Law are intended for the protection of Government interests, and to ensure prompt realization of Government revenue if the Government demand is made good, no matter by whom, the estate ought not to be sold.

10. *Board's paragraph* 6 (3).—The majority of the district officers would concede this right subject to the payment of a fine or penalty. The district officer of Dinagepore, however, suggests that the infliction of a penalty should be optional, for he says it sometimes happens that in a joint undivided estate the default is committed purposely by one of the shareholders, and the arrear tendered subsequently by the other shareholders who do not wish to bring the estate to sale. In such cases he would wish to retain the option of accepting payment without penalty.

In this proposal also I concur: in fact, if we are to relax the stringency of the present law, and allow payment to be made after the last day, some penalty must be attached to default, or else all payments will come to be postponed up to the day of sale. The scale of fees should be a sliding one, the penalty increasing in proportion to the largeness of the amount defaulted a considerable arrear should be more heavily taxed than a light one, for in the former case the default is more likely to be deliberate. I would not make the levy of the fine optional. It is true sharers in an estate often default intentionally, but by taking a little trouble to make enquiries on the last day of payment, co-sharers can easily discover the default and make it good, and besides any amount so paid can be recovered as damages

11. *Board's paragraph* 6 (4).—Most of the district officers are in favour of giving notices to defaulters by registered letters. The district officers of Rajshahye and Bogra would issue such notices with a condition clearly stated in them that if all Government dues are not paid up within 15 days after receipt of the notice, no tenders will be afterwards accepted, while the district officers of Dinagepore and Pubna would issue such notices in payment of a certain fee. The district officer of Rungpore considers that the only condition necessary is that sufficient time for the receipt of the notices and the remittance of the arrears should be allowed. Notices should be issued, I think, under registered covers, and if the proposal be accepted to receive arrears after the last day of payment, it will not be necessary to specify any period within which the payment must be made A penalty, however, as I have pointed out, must be exacted, and this amount shown in the notice as due in addition to the actual arrear, the two items together being the actual amount which must be paid to save the estate from sale. In one direction only would I limit the privilege of paying in arrears after the last day of payment I would accept no payment tendered within two or three days of the sale day. It is quite true that the acceptance of arrears up to the very day of sale does cause great inconvenience to the Collector's establishment, and to meet this I would provide, as noted above, that the privilege must be taken advantage of within a reasonable period. A rule of this nature was introduced, if I remember right, in Chittagong and worked well

12. It is the practice in all the districts to require a separate application with a separate eight-anna stamp for the exemption of every estate from sale. In the opinion of the district officers of Dinagepore and Rajshahye, this penalty is not sufficient. In this view I concur, as I have said a person who deliberately defaults, say to the extent of Rs 50, ought not to be let off with a fine of annas 8.

13. *Board's paragraph* 7 —The district officers of Rajshahye, Pubna, and Rungpore are of opinion that the proposal to make the cess demand realizable under the Sale Law is a good one On the other hand, the district officer of Dinagepore observes —"I believe zemindars would prefer the certificate procedure to the Revenue Sale Law for the realization of cess demand Under the former procedure they get ample time to pay the arrears, and the Government also is no loser, as interest is levied till the arrears are realized

"During the last three cess years some 367 sale proclamations have been issued, but actual sale was held in 11 cases only. The sales were confirmed in two cases only In both cases the estates were petty revenue-free properties.

"The certificate procedure does not cause much expense to the zemindars It generally varies from annas 12 to Rs 2-8 to Rs 4-8 in case of sale at the utmost. If an attempt be made to make the cess demand realizable under the Sale Law, I apprehend the action will be viewed by the landlords with distrust, as they will suspect that the cesses are eventually to be amalgamated with land revenue, and the estates made liable for the amalgamated demand."

The zemindars of the districts of Rajshahye and Bogra are, it is said, not in favour of the proposal to have cesses realized under the Sale Act, while the landlords in Rungpore are reported to be willing to adopt it.

14. If the proposed relaxation of the provisions of the Sale Law be adopted, I consider that cesses may be safely made realizable as land revenue. The demand is now a perfectly well-known and recognized one, and if the defaulter gets notice by registered letter of the amount in arrear, and is allowed a period of grace within which to pay the demand, there can be no valid objection to realization being made in the same manner as in the case of arrear of Government revenue.

No. 317R, dated Chota Nagpore, the 25th May 1888.

From—C. C. Stevens, Esq., Commissioner of the Chota Nagpore Division,
To—The Secretary to the Board of Revenue, Lower Provinces.

In reference to Mr. Buckland's letter No. 1141A, dated 16th December 1887, regarding proposed modifications of the sale laws, I have the honour to offer the following observations, after having consulted the district officers of this division, who, however, owing to the peculiar condition of Chota Nagpore, have had but little experience of the subject.

2. I entirely concur in the suggestions made by the Board, that estates should, in the first instance, be put up to sale subject to encumbrances. Some years have now passed since I had much practical experience of the details connected with the working of the sale laws, and I cannot quote special instances, but I am certainly under the impression that cases do occur in which the need for the proposed alteration of the law is felt. I also am of opinion that no great alteration of the law would be required; the sale would be stopped in the same way as sales under section 14 of Act XI of 1859, the estate free from encumbrances declared open to sales, and this second sale duly advertised. It is conceivable that the introduction of a plan by which the sale of estates in the first instance subject to encumbrances might lead to the creation of fictitious tenures or mortgages, but it is not clear to me that Government could be injured in any way. I think that such tenures might be created sometimes when the proprietor desired to part with a portion of his rights; but not to lose his connection with his estate, he would perhaps convert himself into a putnidar rather than give his estate in putni. To this, without further consideration, I am unable to see any grave objections.

3. I think that the chief reasons why tenure-holders have omitted to avail themselves of the protection afforded by the registration provisions of Act XI of 1859 are the following:—(1) Ignorance of the law, (2) apathy, (3) shortness of time allowed. The first two of these causes explain themselves. As to the third, it is necessary to remember that frequently there are long delays in the registration offices; and while a deed is being registered there, the limitation for registration proceedings under Act XI of 1859 is running on. The period within which a tenure may be registered may therefore in my opinion be lengthened to six months, or perhaps even longer, or the time spent in getting the deed registered might be allowed for.

4. I see no objection to the Board's proposal that where a Commissioner dismisses an appeal, and does not exercise his power of reporting the case under section 26, with a view to the sale being set aside by Government on the ground of hardship, the appellant might be allowed to make a further representation to the Board. I would, however, allow but a short period for making such a representation: as there are obvious objections to allowing the validity of a sale to remain doubtful for a long time, one month from the date of the Commissioner's order would be enough.

5. I have carefully considered the case of Lala Mobaruk Lall, and think that for the protection of the interests of Government, and of those of purchasers, and even of those of defaulters in general, it is necessary that a sale should not be declared to be void: unless its validity is disputed before a competent court within a moderate time, legislation will be necessary. I would omit from the beginning of section 33 of Act XI of 18 59, the words "for arrears of revenue or other demands realizable in the same manner as arrears of revenue are realizable made after the passing of this Act," and would insert some such words as the following—"made under this Act, or under colour of it, shall be held by a Court of Justice to have been void *ab initio*, and no such sale shall be annulled, &c.," as in section (33): probably these words may be improved, but my meaning is that it should be made clear that no irregularities or defects of procedure should render a sale absolutely void, or should exempt the proceedings from the operation of section 33.

6. I do not think that zemindars should be allowed to relieve themselves of any liability by registering the names of their putnidars as the persons responsible for the payment of the revenue. The agreement to pay revenue is made by the zemindar with Government. Government is no party to arrangements between the zemindar and the putnidar, and its interest cannot be affected by them.

7. I do not think that the law should recognize the *right* of any person to pay in arrears after the last day of payment, but that the Collector should be authorized to levy a fine and interest in each case in which he may think fit to refrain from selling an estate or share. It should be laid down that he should invariably do this except some special reason for exemption existed. The stamp fee on a petition is not penalty enough except, in the case of a very petty estate. Perhaps a fine of 8 annas, together with interest on the amount of the arrear at one per cent. per mensem, would be a suitable penalty. I have, as Collector, often desired to be able to steer a middle course between letting off a defaulter altogether and selling

off his estate. For the exceptional circumstances of this division, I am not aware of any case in which two or more estates the property of one individual have defaulted at the same kist, so that it cannot be said what the practice would be. I have myself elsewhere insisted on separate petitions in such cases.

8. I am very doubtful whether Government should throw on its establishments the labour and responsibility of sending notices in cases of default, but practically as a district officer I have always accepted almost any excuse, however feeble, from defaulters up to the time of the sale, making the one condition that the defaulter should, desides his arrears of revenue, pay up all debts due to Government on his estate before I would grant him the indulgence of exemption.

9. So far as I can remember, I always used to accept tenders of Government revenue by whomsoever they might be made.

10. It would be unquestionably a great saving of trouble if the cesses could be realized precisely in the same manner as the Government revenue. The Deputy Commissioners of Lohardugga and Singbhoom are in favour of doing so. Mr. Baker, Officiating Deputy Commissioner of Manbhoom, on the other hand, makes the following remarks :—

"I do not recommend the extension of the revenue sale law to the recovery of cesses. It is admitted that this law is an evil, though a necessary evil, and is notoriously a measure of extreme stringency. Its severity is mitigated in practice by the extreme laxity of its application, very few estates being actually brought to sale except by the intentional default of the proprietors. Were the law extended to cesses, these mitigating agencies would have no application. For in the first place it appears from the Government letter that in 1886-87 the number of cess certificates issued was 80,395, and if sale was resorted to in only 10 per cent. of these cases, over 8,000 estates or rent-free tenures would come to sale, which is five times greater than the number of estates sold for arrears of revenue. Secondly, it is surmised in the Government letter that sales for arrears of cess are mostly forced sales, the defaults being due to causes more or less beyond the control of the proprietor. If this view is correct, and no doubt it is, it follows that most of the sales for arrears of cess which occur under the present system will continue to occur under the system proposed. It would seem probable therefore that whatever hardship exists at present will be magnified five-fold by extending the revenue sale law to the recovery of cesses: this result is not in accordance with the spirit of the present reference, which is to lessen the hardships to which that law gives rise.

"It would no doubt greatly expedite the recovery of the cesses if the sale law were made applicable. But this advantage would, it appears to me, be acquired at too high a price."

Colonel Garbett, Deputy Commissioner of Hazaribagh, writes as follows :—"The last point for consideration is that which relates to realization of cesses, and with regard to this I am unable to recommend any change in the existing procedure. I have not come across any case of forced sale at all during the period the present law [Act VII (B.C.) of 1880] has been in force, and I cannot recall a single instance in which a sale has resulted in loss or trouble to either the proprietor or the State. The system at present in force appears to be beneficial to the zemindars, and I do not think that the assimilation of the procedure for the realization of the cesses with that for the recovery of arrear of revenue would at all be accepted by them as preferable to the present system."

I concur in feeling very grave doubts as to whether the suggested change would commend itself to the zemindars, or whether they would be readily persuaded that it would be for their real advantage. I have not had any opportunity of discussing this matter with landholders myself, but in Calcutta there will be no difficulty in ascertaining the sentiments of persons of that class. They will not deny the practical simplicity of the proposal, but I fear that they will regard it as a dangerous encroachment on the security of their property.

No. 942R, dated Bhagulpore, the 2nd July 1888.

From—J. Beames, Esq., Commissioner of the Bhagulpore Division and Sonthal Pergunnahs,

To—The Secretary to the Board of Revenue, Lower Provinces.

I have the honour to reply to your letter No. 1141A, dated 16th December 1887, after consulting the Collectors of this division. The delay has been caused as usual by the Collector of Maldah, whose report, when at length received, was not found to contain much that was valuable.

2. As regards the first proposal to put up estates in the first instance subject to encumbrances, I must express my dissent from the view taken by the Board. Within my own experience, cases in which landlords have fraudulently allowed their estates to go to sale in order to avoid under-tenures have been very rare. I do not recollect any single instance in which this was ever definitely proved, though it has been sometimes suspected. The experience of the Collectors of Monghyr, Bhagulpore, and Purneah coincides with my own. The first-named officer also points out that it is only in large estates that tenures can be created, and large estates are very rarely sold.

3. The infrequency of common and special registration is due, in the opinion of those officers and of myself, to the reason suggested by Government, namely, that the tenure-holders feel themselves practically secure without it. It would be very difficult for an auction-purchaser to manage an estate to which he was a stranger if he broke up the tenures. The evicted tenure-holder would have a stronger hold upon the ryots than the auction-purchaser,

and in combination with them would give endless trouble. The new proprietor would also have much difficulty in getting collection papers from the retiring tenure-holder, and without them would not be able to collect. He would feel, and, in the rare cases which occur, does feel, that it is his wisest policy to let the tenure-holder remain. If, as time goes on he finds that the tenure is held at too low a rent, I believe, with the Collector of Purneah, that he occasionally threatens to cancel the tenure, or to take steps for enhancing the rent under section 37, and a compromise ensues, under which the tenure-holder agrees to pay a *salami* or fine for the retention of his tenure. But such cases are not, I think, at all frequent. Even in the case assumed by the Board, in which a zemindar fraudulently (or it may be quite honestly) allowed his estate to be sold in order to get rid of the tenures and purchased it himself *benami*, he would generally end by a compromise, and allow the tenure to stand on receiving a *salami*. The Collector of Bhagulpore says he has consulted many of the leading pleaders and revenue agents of his court, and they all assure him that cases of avoidance of tenures after sale never occur. Occasionally a tenure-holder under the 4th clause of section 37 may have to defend his house or garden against enhancement, but even this is rare.

4. It must also be borne in mind that the proposal to sell estates subject to encumbrances would be a serious hardship to really impecunious zemindars, that is, to men who let their estates go to sale because they really have not the means of paying the revenue. To such men it is a matter of the utmost importance that the largest possible sum should be realized by the sale, because what remains of sale proceeds, after deducting the arrear and costs, is all they have to live on, and any law that would reduce this amount would tell very hardly upon them. It is singular to see such a proposal mixed up with remarks about the severity of the sale law. I have always strenuously denied that the sale law is severe, and I hold that view still In dealing with a people so notoriously lax and unpunctual in all their affairs as the natives of India, it is absolutely necessary to enforce punctuality, if the accounts of this immense empire are to be kept free from hopeless confusion As it is, this law is worked with the utmost leniency The sunset rule is more of a bugbear than a reality, for any man who can show a decent excuse, and sometimes one who can show no excuse at all, can induce the Collector to take the money and exempt his estate at any time before the actual fall of the hammer. On the sale day the Collector's court in every district is thronged with people, bringing in their money at the last moment.

5. I am also supported by most Collectors, and by numerous pleaders who have been consulted, in thinking that the effect of the Board's proposal would be that fictitious encumbrances would be created to a large extent by insolvent proprietors. This device is already freely resorted to by bankrupt zemindars to defeat the object of a Civil Court sale in execution of decrees.

6 I see no reason why a Collector should not receive the revenue of an estate from any one who likes to tender it. There is nothing in Act XI against this. On the contrary, the provisions as to the person by whom payment is to be made appear to have been purposely left vague. There are nowhere in the Act any such expressions as "if the recorded proprietor shall not pay." I do not think it is any business of the Collectors to enquire who pays the money. All he has to see to is that the money is paid. It would require no legislation to enforce this view. A simple executive order would suffice.

7. As regards the Board's second proposal, that an appeal should be allowed in cases where a Commissioner neither reverses the sale on the ground of irregularity, nor recommends its cancelment on the ground of hardship, it appears to me that it is quite unnecessary to make any change in the law. Commissioners are, I venture to think, quite able to judge whether there has been hardship or irregularity, and their decision should be final. The remark that no two Commissioners take the same view of what constitutes hardship may be correct; if it is, the remedy is to define what circumstances constitute hardship. It may be difficult to do this, but the authors of the Penal Code have managed to define much more indefinable things, and I believe there is still intelligence enough in the country to surmount this difficulty. I should get over it by the simple process of saying that there was no such thing as hardship in the matter. Zemindars know perfectly well the terms on which they hold their estates, and if they do not comply with those terms, they know the consequences. The time has long gone by for treating the natives of Bengal as children. When people talk about mitigating the severity of the sale law, they seem to forget the system which it replaced—a system which had been in force for six centuries, and which comprised such amenities as stripes, torture, imprisonment, and compulsory conversion to Mahomedanism

8. I need not remind the Board of the extent to which the right of appeal is abused in this country It is probably not going too far to say that about 90 per cent. of appeals are dismissed after hearing as being groundless. Men do not appeal from a desire for justice, but from a spirit of litigation; and if the Board allows a petition (which will be only an appeal under another name) in sale cases, it will probably find its appellate work doubled or trebled before long by utterly futile applications.

9. The third suggestion refers to giving possession under section 29. I have never had any difficulty, nor have the Collectors whom I have consulted. The proclamation under section 6 is to "specify the estates or share of estates" to be sold. The thing that is specified is the thing purchased, and the thing of which possession is given under section 29. The fact that a mistake or two has been made here or there is no reason for altering a law that works smoothly and gives no trouble. How does the Board suppose a Collector would set to work if he had to give possession of an estate or share according to metes and bounds? It would be an infinitely more complicated business than the biggest settlement, would stir up all sorts of

disputes, and finally land all parties, including the Collector, in the Civil Court. It is therefore far better that the Collector should continue to give mere technical possession, as he does at present, and leave the parties concerned to fight out their disputes themselves. I see no need for any alteration of the law.

10. As regards the question raised by the High Court ruling in Mobarak Lall's case, it is considered by all officers that some provision should be made by which sales should be made final after a certain period.

11. We are all unanimous in objecting to any measure which would allow zemindars to shift their liability on to putnidars or anyone else. This step would multiply difficulties of all sorts, and is quite uncalled for. It is also quite unnecessary to issue any notices to defaulters. It is the business of every man under engagement with Government to pay his revenue punctually, or to see that it is paid by his agents. We should open a wide door to evasions and trickery of all sorts by this step. That which was introduced as a favour would soon be claimed as a right, and default would steadily increase.

12. The law should not recognize the *right* of any one to pay in arrears after the last day of payment. I have already mentioned the unspeakable confusion and tumult that takes place in a Collector's court on sale day, owing to people coming in at the very last moment with big bags of money, which has to be counted. I would recommend the system which was in force in Midnapore till the Board stopped it as illegal. Under this system a man who wanted to pay his arrears after the last day of sale had just to go to the treasury and deposit the money. He then presented a petition to the Collector, accompanied by the receipted chalan on which the estate was struck off the sale list. If you let anybody and everybody pay in arrears after the last day of payment, the "last day" becomes a meaningless expression. No one will pay in till the sale day, and the confusion will be indescribable.

13. Regarding the suggestion that road and public works cess should be recovered as arrears of revenue, the zemindars in Purneah are said to be not averse to this course. Those in the other districts are much opposed to it. The grounds of opposition are concisely and forcibly stated by Mr. Grant, a large zemindar of Bhagulpore, in the following words:—

"One-half share of the road and public works cesses is paid by the landlords to Government on account of the ryots, from whom the landlords have to collect the money as best they can. It is too much to expect that landlords would voluntarily and readily accept the institution "of a more summary procedure for the recovery of demands, half of which are due by the ryots, when Government have taken away from them the one effectual method they had for the speedy recovery of undisputed rent and cesses from well-to-do ryots able to pay, but not doing so, viz., the procedure of section 52 of Act VIII of 1869."

14. From the official point of view every one is agreed that it would be a great improvement to get rid of the tedious and cumbrous procedure of the certificate law. This procedure, originally invented as a rapid and summary process for recovering dues, has now become very elaborate and lengthy, and is more of a hindrance than a help. Unless, however, the zemindars as a body consented to have the cesses recovered as arrears of revenue, I doubt if we could fairly enforce the change.

No. 1337L.R., dated Dacca, the 20th July 1888.

From—W. R. Larminie, Esq., C.S., Commissioner of the Dacca Division,

To—The Secretary to the Board of Revenue, Lower Provinces.

With reference to your No. 1141A, dated 16th December 1887, and accompanying correspondence, I have the honour to submit the following report, first apologising for the delay which has occurred, but which was unavoidable, as one of the Collectors did not send his report till the 29th June, and the subject under consideration is of such importance that it cannot be hastily disposed of.

2. I shall consider the various questions raised in the order shown in the letter under reply.

3. First as to the proposal that estates should in the first instance be put up to sale subject to encumbrances. There is a decided preponderance of opinion against this suggestion. Mr. Dutt and the Secretary of the Dacca People's Association alone support it, but do not give any serious reasons for their opinion. Indeed, Mr. Dutt would limit the procedure to cases in which a tenure-holder came forward and applied for the proposed course being adopted.

4. I am myself strongly opposed to the proposal. I have not the slightest doubt that the immediate result would be a very general postponement of payments on account of land revenue. It would be impracticable, or at least useless, to make the sale free of encumbrances follow immediately the limited sale. Fresh notices would be necessary, and a delay of two months would be the inevitable result. From my experience of the Dacca Division, in particular, I am convinced that a large number of zemindars would postpone payment to the last possible date, and care would be taken that the bids made at the first sale would not be sufficient to cover the amount of default. In Backergunge, through a mistake as to the provisions of the law, the revenue due on a large number of a certain class of estates had been recovered by the certificate procedure instead of under the provisions of Act XI of 1859. On my pointing out the error, the correct procedure was adopted, and the change resulted in a reduction of the amount of arrears by no less than a lakh and a half of rupees. Proprietors and others find that they can make a more profitable use of their money than paying Government dues, and naturally take advantage of every opportunity for delay.

5. The creation of fictitious tenures would also give rise to endless difficulties. I have met with cases in which the nominal rent paid by a subordinate tenure-holder was less than that paid by the tenure-holder himself to his superior landlord, so that the latter found it almost impossible to realize rent due to him.

6. Looking to the future, I venture to point out the very great difficulties that may possibly threaten the financial position of India if any source of revenue, such as the sale of opium for instance, should be found to fail. Without entering into details, it seems to me that it would be very unwise to fetter the future action of Government by any relaxation of existing covenants which absolute necessity may require to be reconsidered.

7. Looking at the question from the tenure-holder's point of view, I would point out that the principle of *caveat emptor* clearly applies. Subinfeudation is doubtless a very great evil, and it would be, in my opinion, very bad policy to legislate with a view to its encouragement. The existence of under-tenures tends to create a class of idle landlords, who either directly or indirectly prey upon the cultivators of the soil, and, although the present state of the law may lead to individual hardships, I think the cancelment of under-tenures is an advantage to the State. It is here to be remarked, too, that if the landlord be allowed to look upon a sale for arrears of revenue as a means of securing a good price for his estate, it may hereafter be worth while to consider whether he should not be compelled to pay for the privilege. Government is paid one per cent. on putni sales, and on general principles revenue sales should not escape taxation if looked upon in the light mentioned above.

8. The general opinion, however, with which I agree, is that a further chance should be given to tenure-holders. The time for registration should be extended, and notices should be extensively issued, so that want of knowledge should not hereafter be alleged as an excuse. As regards under-tenure holders, they might be allowed to compel those who hold direct from the zemindar to register their tenures and thus protect all below them.

9. As regards the facilities now given to zemindars to postpone payment of land revenue till the very day before that fixed for sale, I think they depend too much on the peculiar indiosyncracies of the officers concerned. In my opinion a fixed rule should be laid down under which no late payments should be received, except on payment of a heavy fine. In the case of zemindari dâk tax, the defaulter has to pay double the amount due, and I do not see why a fine not exceeding 25 per cent. of the amount in arrear should not be levied.

10. With reference to the second question raised in the letter of the Government of Bengal, I have to report that those whom I have consulted are in favour of a further reference being allowed to the Board I myself do not see the necessity for it.

11. As regards the third question, the preponderance of opinion is against the proposal to give possession of specific lands. With this opinion I entirely agree. In the first place, any attempt to carry out the proposal would be attended with considerable expense, and in the second there would be no finality in the proceeding. If there were any *bonâ fide* dispute, it would be carried into the Civil Court. At the same time I think the law requires amendment, as in its present form it is scarcely practical. A case came before me the other day in which the purchaser called upon the Collector to remove the old proprietor. It happened that the latter's family residence was on the estate, and it was urged before me on appeal that the man should be forcibly removed from his house. Paragraph 25 of Board's letter No. 531, dated 4th July 1885, does not appear to me to be exactly in accordance with the law. It seems to imply that the *removal* is to be made *by proclamation*, &c. Now section 29 of Act XI of 1859 lays down that delivery of possession is to be made by removing any person, &c., *and* by proclamation, &c. The removal is therefore something distinct, but I confess I am unable to understand what the law contemplates. I felt sure that it was not intended that a man should be turned out of his house, and decided accordingly. At the same time, I declined to accede to the request that I should say what the law really meant.

11*a*. The decision in the case of Lala Mobarak Lall is certainly open to cavil, and legislation is apparently necessary to nullify it. The most obvious course would be to enact that, unless the point was raised before the Commissioner, it should not be admitted by the Civil Court, and that in no case could a suit be instituted to set aside a sale after the expiry of a year.

12. I have now to consider the question of the certificate procedure, more especially in connection with arrears of road and public works cesses. I confess that the present state of affairs is most unsatisfactory. On the one hand payments of public cesses are very irregular, and on the other the cases of hardship involved in the recovery of arrears are very numerous. Sitting as an Appellate Court, I have had to stretch my powers to the utmost in order to avoid the occurrence of what might almost be looked upon as a scandal. One instance will suffice. A sum of about Rs. 2-4 was due on account of zemindari tax. A certificate was issued under the law for double the amount. The debtor came in and paid all except 5 annas. To realize this and costs his estate, paying an annual revenue of some Rs. 330, was attached and sold for Rs. 12. Fortunately a flaw was discovered in the procedure, and I was able to set aside the sale. The evil has been intensified by the ruling of the High Court in reference to section 311 *et seq* of the Code of Civil Procedure. Appeals to the Commissioner involve great expense, and it is very difficult indeed for that officer to come to a satisfactory conclusion as to facts which involve a great mass of detail, such as service of summonses, notices, &c. The old practice should, in my opinion, be restored by legislative enactment.

13. On the general question as to the recovery of cesses, I have little or no doubt as to the procedure that, if adopted, would be for the real advantage of all concerned. I mean, of course, that all such dues should be realized in the same way as land revenue. Not only would they be realized more punctually, but landholders would, in the long run, be benefited

by the increased strictness of the law. The amount now expended in paying costs incurred in the realization of even small sums must be a very serious item in a zemindar's account; and the indirect charges are, I fear, also very considerable. It is hopeless, however, to expect that in the present state of public feeling on the subject any serious step could be taken to secure such a desirable end, unless, indeed, greater facilities were given to landlords for the realization of their own dues.

14. I think myself that a good deal could be done to secure the more punctual realization of cesses by administrative action. Towji and cess offices do not work with sufficient accord. It would not be difficult to arrange so that every one when paying his land revenue should be served with a notice showing the amount of cesses due, and that he should acknowledge having received it. I am of opinion that in many cases ignorance is the cause of default, and I fear that the amla of the various courts find it to their advantage in many ways that payments should not be punctual. The success of cess collections depends, however, chiefly upon the character of the officer in charge of the work, and upon the amount of supervision exercised by his Collector.

No. 1883R, dated Cuttack, the 28th September 1888.

From—C. F. Worsley, Esq., Commissioner of the Orissa Division,

To—The Secretary to the Board of Revenue, Lower Provinces.

With reference to your letter No. 1141A, dated 16th December 1887, I have the honour to submit the following report.

2. The points on which my views are first required appear to be contained in three proposals, which are to the effect:—

(1) That estates should, in the first instance, be put up to sale under Act XI, 1859, subject to encumbrances.

(2) That a Commissioner's order dismissing an appeal against a sale should not be final in the sense of barring petitions to the Board under section 26 of the Act.

(3) That the law regarding the delivery of possession to auction-purchasers should be amended.

I am also requested to consider—

(4) How far zemindars should be allowed to relieve themselves of liability by registering the names of their putnidars as responsible for payment of revenue.

(5) Whether the law should recognise the right of any person to pay in arrears after the last day of payment.

(6) Whether this right should be conceded subject to the payment of a fine or penalty.

(7) Whether notice of default should be given by registered letters, and under what conditions.

(8) Whether the cess demand should be realized under the sale law.

(9) Whether the sale law should be modified on account of the High Court's decision in Lala Mobaruk Lall's case.

3. The opinions submitted by the Collectors are either a voluminous note recorded by the Government Pleader, or a report prepared by a Deputy Collector, or an exceedingly brief statement drawn up by a Collector himself. The Collectors, like myself, are more or less new to this division, and I feel some diffidence in offering suggestions on such important questions when considered mainly in their relation to Orissa.

4. With regard to the first question, I gather that no need for the proposed provision is practically felt in this division, and I think, with the Government Pleader of Cuttack, that such an enactment would encourage the creation of fictitious tenures and mortgages if the sales of estates were numerous. For many years such sales have been very few in number, and no change in the law, so far as this division is concerned, seems necessary. On general grounds, I am also opposed to any innovation. I believe that unregistered tenure-holders often hold their tenures on incomplete titles, having obtained possession originally by the aid of some powerful co-sharers, and that those whose titles are good ought not to be rewarded for despising the law. Only in the event of its being proved that widespread injury had been, or was likely to be, caused by revenue sales in connection with the non-registration of tenures would I be willing to amend the sale law in favour of unregistered tenure-holders.

5. The second question is of small importance in this division, and I would deprecate any change in the law, both on local and general grounds. It is, I believe, most desirable that when a Commissioner dismisses an appeal, and refuses to recommend the annulment of a sale under section 26 of Act XI, his order should be in every respect final. The issues generally are of a simple nature—certainly those which are connected with hardships, real or imaginary; and if a Commissioner is fit to finally decide an appeal itself on its merits, he may, I think, be safely trusted to say whether a sale has caused hardship or not. Any way, it would be better that he should err occasionally in the latter direction than that the law should show a distrust of his discretion and common sense.

6. As to the third question, I have certainly had two or three cases before me in appeal, as Additional Commissioner of Patna, which seemed to show that the provisions of the law were not thoroughly understood, but my own experience does not justify me in saying that those provisions ought to be made more clear. In the cases to which I refer some of the former proprietors claimed to be in possession of certain shares as zir-peshgidars. Where

there is no complication of this kind, there is no difficulty according to my experience in giving possession; and even where such a complication exists, there is little practical difficulty. The inadequacy of section 29 of Act XI, 1859, to meet every possible case is manifest at once if we consider the sale of a wholly diluviated estate (*vide* Board's Rules, chapter III, section IV). How the drum is to be beaten before "the occupants of the property," or how a copy of the sale certificate is to be affixed "in some conspicuous place of the estate" (non-existent) cannot be explained by law. Common sense must solve the question here as in certain cases where an auction-purchaser wishes the Collector to pass arbitrary orders.

7. The fourth question is not applicable to Orissa, and I have no personal experience of the putni system.

8. The fifth question is one on which in former years I expressed my views as a Behar Collector with some emphasis. My opinion still is that, after the latest day of payment, no person other than the proprietor of a defaulting estate should be allowed to pay in arrears. I think that this is one of the cases in which to save a man against his will may be felt by the defaulting proprietor to be as bad as to kill him against his will. I venture also to doubt whether it is wise for a Collector to attempt to analyse too minutely the causes which may occasionally lead defaulting proprietors to abstain from applying for the exemption of their estates from sale. At the same time, if this occasional action or inaction could be shown to be growing into a common and injurious practice, I should be prepared to consider more carefully the propriety of applying a remedy.

9. From the next preceding paragraph it follows that at the present time I must answer the sixth question in the negative.

10. With regard to the seventh question, I am in favour of giving notice, if possible, by registered letters in cases where defaults are small and there are many co-sharers, but the matter is not sufficiently important in my opinion to justify legislation, and without legislation I do not see how we can recover postage and registration fees when payment is refused. To keep a list of deposit accounts for purchase of stamps seems impracticable.

11. The eighth question seems to me to be one that cannot possibly be answered in the affirmative without the consent of all zemindars, who would be affected by the proposed change. The fact that some only may be in favour of the change is in my opinion of no importance. My chief objections are—

(1) That the proposed change would be an extreme innovation.

(2) That under the existing system endeavours are made, and to a large extent with success, to enforce payment of cesses against the individual defaulters; but if an estate or share is held liable for such arrears, all co-sharers will suffer alike as they now do under Act XI, 1859.

12. The only other point on which suggestions are invited is the supposed insecurity of titles of auction-purchasers, owing to the decision in the case of Lala Mobaruk Lall. But the difficulty here, I think, can be removed by executive orders. In one or two instances only have I ever had occasion to reverse sales on the ground of the sale day having been fixed within less than 30 clear days from the date of affixing the notification under section 6 of Act XI, 1859, in the office of the Collector or other officer duly authorised to hold sales under the Act. Such a mistake in the giving of notice is almost unpardonable, but to prevent a possibility of its repetition, I would recommend that notifications under section 6 in future be posted up in the presence of an Assistant or Deputy Collector, or even of the Collector himself, whose signature should be attached to an entry in a register to be made there and then and to be produced before the Collector on the day of sale, and that no sales should be held in the absence of the note. The matter is extremely simple, and seems to me to stand no more in need of legislative assistance than the blunder of holding a sale on a Sunday or other close holiday. I may add that sales have occasionally been held for alleged arrears of rent which have not actually existed, and that *a fortiori* such sales would appear to be not merely voidable, but void *ab initio*. It is impossible to say where legislation is to stop if it is once undertaken to cure blunders which ought never to be committed.

13. I should have been glad if the time at my disposal had made it possible for me to write more at length on these questions, but scanty leisure, and the belief that no changes are required in this division, have compelled me to state my views very briefly. In my own mind I have not the slightest doubt that a strict sale law and moderation and common sense in working it are essential, and that however many concessions might be introduced and embodied in new Acts, there would always be defaults in the payment of revenue and attempts on the part of defaulters to delay paying up arrears until the day fixed for sale. When I left Mozufferpore in December 1882, the sale question had become a serious one, not in the interests of zemindars and tenure-holders, but in the interests of the Collector, who found it impossible to commence sales at the time fixed owing to the rush of defaulters at the eleventh hour to pay in arrears.

No. 478RL, dated Calcutta, the 9th November 1888.

From—A. Smith, Esq., Commissioner of the Presidency Division,

To—The Secretary to the Board of Revenue, Lower Provinces.

I have the honour to acknowledge the receipt of the Board's letter No. 1141A, dated the 16th December last, forwarding a copy of the correspondence between the Board and Government, and asking for an expression of opinion on the questions suggested in the Government letter with reference to certain proposals made by the Board in view of the

modification of Act XI of 1859. To enable the Board to weigh the opinions of all the district officers on this important subject, I enclose a *précis* of their reports. It will be convenient to discuss first the general recommendations made by the Board.

2. The Board's first and most important suggestion is that the law should contain a provision to the effect that "estates shall in the first instance be put up to sale subject to encumbrances, and shall only be sold with the present power to void encumbrances in the event of the bidding at the first sale not being sufficient to cover the outstanding demand and costs."

This proposal involves two practical questions—

(1) Whether any need for such a provision is practically felt.
(2) Whether the object cannot be attained by a comparatively slight modification of the present law.

3. The first of these questions again hinges to some extent upon two points of fact—

(*a*) Whether under-tenures are in fact often declared void after a sale.
(*b*) Whether the liability of estates to sale subject to encumbrances is likely to lead to the creation of fictitious tenures or mortgages designed to maintain in substance the beneficial interest of the proprietors in the event of their ostensible title being sold for default.

4. With regard to point (*a*), the reports of the district officers show that under-tenures are seldom voided by an auction-purchaser—a fact which probably mainly accounts for the indifference of the tenure-holders as to availing themselves of the protection afforded by the present law. If any great hardship were experienced in this direction, a freer resort to the protective clauses of the Act would have been the probable result. Why the auction-*purchasers* do not more largely exercise the powers which the law gives them of voiding encumbrances is less clear. It may be to a great extent attributable to their reluctance to face the opposition of the tenure-holders and tenantry, and also to a natural feeling of hesitation to resort to litigation with all its difficulties and uncertainties. It may also be fairly assumed that tenure-holders largely make amicable terms with auction-purchasers to avoid interference on the part of the latter. In some districts it has been the practice for the putnidars, &c., to pay the Government revenue direct into the treasury under a special condition entered in the leases. This practice secures to all intents and purposes immunity to the putnidars where they pay the whole demand.

5. Whatever may be the real cause of the protective clauses of the law remaining a dead letter, it seems to be clear that formal voiding of tenures is not frequent. It does not, however, follow that holders of tenures are not frequently obliged to make concessions not equitably incumbent on them to prevent voiding.

6 As regards point (*b*), there is almost a concensus of opinion. The proposed measure will afford manifold facilities to the defauling proprietors to create fictitious tenures or mortgages. Experience of the difficulties of decree-holders in civil suits makes this almost certain. The effect, too, will undoubtedly be, as remarked by Government, the development of the system of subinfeudation.

7. In the light of these remarks, I proceed to discuss the general question as to the expediency or otherwise of selling estates in the first instance subject to encumbrances.

8. On this question the opinions of the Collectors are divided. Messrs. Forbes and Dalton are in favour of the proposal, while Messrs. Hopkins, Waller, and Barrow are against it. I notice at length the two extreme views. Mr. Forbes strongly advocates the proposed amendment of the law, and even goes a step further than the Board. He would on no account put up estates to sale with power to void encumbrances, no matter whether the amount of the bid covers the arrears or not. He recommends the adoption of the scheme proposed by Sir Frederick Halliday in 1855. Mr. Forbes writes:—"But the question must be considered from a broad point of view, divested of imaginary difficulties. Section 37 has given defaulting estates a statutory value far in excess of their intrinsic value. To the latter alone is a selling proprietor justly entitled. It is all that he would get at a private sale. But immediately he fails in his duty towards Government, the law, as it now stands, waves a magic wand over his estate, and invests it with a statutory value, at the expense of a number of holders of vested interests, from whom the defaulter has already once received full value, and who are in no way to blame for his default. I can conceive nothing more inequitable."

9. Mr. Forbes is therefore of opinion that a defaulting estate should be put up to sale in the first instance "at its intrinsic value, that is, subject to all encumbrances, whether registered or not." He observes:—"But if the intrinsic value is found to be insufficient to meet the Government claim, what is to be done? Is it right and just that the property should again be put up for sale at its present statutory value, the defaulter being allowed to appropriate the surplus sale proceeds at the expense of the holders of the unregistered encumbrances? I think that there can be no doubt but that the only equitable solution is that proposed by the Government of Bengal in 1855. The surplus sale proceeds are some measure of the value to the tenants of Sir Frederick Halliday's proposal, but its real value to them will be much more than this, inasmuch as their new landlord will be Government instead of a possible, and if it be their own landlord back again a *certain*, rack-renter. My own opinion is that, in justice to the tenants, there should be no statutory value whatever given by the law to defaulting estates, but the Bengal Government should again boldly put forward Sir Frederick Halliday's scheme."

10. Mr. Hopkins takes a diametrically opposite view, deprecating strongly a change in the law. As pointed out by him, the revenue sale law affords a practical safeguard against subinfeudation, while the proposed amendment, if adopted, would destroy the chief element of its efficiency in this direction. He maintains that the liability of estates to sale with encumbrances will promote subinfeudation, *benami* transactions, and fraud to an extent that will endanger the public revenue

11. It is no doubt a hardship that the rights of tenure-holders should be sacrificed for the default of proprietors, but the necessity of securing permanently the Government revenue is a paramount consideration The importance of this principle has been recognized since the beginning of British administration The earliest law which laid down the principle in Regulation XLIV of 1793, and the reasons which induced the Legislature to pass it, are contained in its preamble, from which I make the following extract —

"The public demand upon the estates of the proprietors of lands with whom a settlement has been or may be concluded under the original regulations for the decennial settlement having been declared fixed for ever, it is to be apprehended that many proprietors, either from improvidence, ignorance or with a view to raise money, or from other causes or motives, may be induced to dispose of dependent taluks to be held at a reduced jumma, or fix the jumma of the dependent taluks now existing in their respective estates at an under-rate, or let lands in farm or grant pattas for the cultivation of lands at a reduced rent for a long term or in perpetuity. Such engagements, if held valid, would leave it in the power of weak, improvident, or ill-disposed proprietors to render their property of little or no value to their heirs; promote vice and injustice; occasion a permanent diminution of the resources of Government arising from the lands in the event of the rent or revenue reserved by such proprietors being insufficient for the discharge of the amount of the public demand upon their estates, be an abuse of the great and lasting benefit which has been conferred upon the landholders by the possession of their lands being secured to them in perpetuity at a fixed assessment."

12. These considerations induced the Legislature to declare that on the sale of estates for arrears of revenue, all engagements contracted by the defaulting proprietor with dependent talukdars, &c., would be cancelled.

13. The same policy has, to quote the words of Regulation XI of 1822, "uniformly been acted upon as a general and fundamental principle of the revenue system of the Presidency." A slight relaxation of this principle was made in that year by vesting the Governor-General in Council with power to sell an estate in any *special* case, subject to existing encumbrances, provided the amount of bid was sufficient to cover the arrear; otherwise to re-sell it free from encumbrances. But this concession was so restricted in its character that it carried little value, the Governor-General in Council having been vested with the power of cancelling "*at all times*" such a sale whenever there was occasion for interference (*vide* section 31).

14 This provision, restricted and arbitrary as it was, presumably proved a failure, it having been withdrawn when the present sale law was passed—a step which was the outcome of a prolonged and careful discussion, and was initiated by no less an authority than Sir John Peter Grant.

15. The lines on which the Board propose to modify the law in this direction (as explained in paragraph 19 of their report) are an improvement on the half-measure sanctioned by Regulation XI of 1822, but are not altogether free from elements of uncertainty. Mr Hopkins points out some difficulties as follows —

"The ultimate sale of an estate with the annulment of all its tenures would necessarily have to be provided for; the procedure of the Collector would thus be complicated with two sets of sale instead of one the difficulty of collection of land revenue would be thus increased, and with this difficulty increased arrears would also increase. I may add also that after several intermediate sales with liability to encumbrances it would be difficult, if not impossible, to decide what encumbrances were voidable, what were not."

16 Sir Frederick Halliday's scheme, which has been so strongly advocated by Mr. Forbes, was, as recited in paragraph 13 of the Board's report, that "*all* tenures in an estate, *without exception or enquiry*, should be allowed to hold as good against an auction-purchaser as against the former proprietor so long as the parent estate should be saleable at a price which would cover the arrears of revenue due from it; but that as soon as the parent estate should fail to be saleable at such a price, it should be forfeited to Government, and the whole of the past settlement under-tenures should be annulled, whereupon Government should proceed to form a new settlement of the land."

17. It was opposed by Sir John Peter Grant in a speech in the Legislative Council, which, though lengthy, is quoted below *in extenso* for ready reference.—

"He (Sir John Grant) came to the case of new under-tenures. This has been admitted by all who had taken any part in its discussion to be a question of great difficulty, and certainly he, who had given a great deal of thought to it, was entirely of opinion that its difficulty had not been exaggerated. It had been under discussion for twelve years between persons who were of all the most competent to determine any such question. A project has been sent up by the Bengal Government in connection with it, which he at one time had strongly approved as being a great step in advance. It was that all under-tenures in an estate, without exception or enquiry, should be allowed to hold as good against an auction-purchaser as they were against the former proprietor, as long as the parent estate should be

saleable at a price that would cover the arrears of revenue due from it; but that as soon as the parent estate should fail to be saleable at such a price, it should be forfeited to Government, and the whole of the past settlement under-tenures should be annulled, whereupon Government should proceed to form a new settlement of the land.

"Upon this plan he would remark that the forfeiture could not be carried out, because whatever sum was offered at the sale for the estate, though it might be less than the amount due for revenue, was the due of the zemindar, who would have a right to insist that it should be carried to his credit, and that the amount of arrears payable by him should be reduced *pro tanto*. That, however, was not a substantial objection to the main feature of the plan. But there were other objections to the plan which he thought were substantial. In the first place, the plan did not profess to give complete security to under-tenants holding under honest titles at fair rents. It did not therefore profess to do what it ought certainly to be the object of the Legislature to do. The object of the Legislature ought to be to give security to the under-tenant with the view of encouraging him to lay out capital in the improvement of his land, and certainly so long as his tenure was liable to be taken from him for no default of his own, or the forfeiture of the parent estate, so long would he be discouraged from laying out his good money upon that land. This discouragement would doubtless be lessened by the adoption of the ingenious plan proposed by the Bengal Government, but it would by no means be removed altogether. For example, suppose that there were two talukdars or holders of under-tenures in one estate, one of whom, having increased the value of his taluk by a large expenditure of capital, had raised his rents to double their original amount; and the other, having allowed his taluk to deteriorate, had reduced his rents by one-half: suppose that, in this state of things the entire estate is put up for sale for arrears of revenue, and that no one comes forward to bid to the amount of the arrears, the estate would therefore be forfeited, the Government would enter into possession, and the Collector would make ryotwari settlement under Regulation VII of 1822. Now the Collector would make a perfectly fair settlement for the land of the estate, for he would make it with reference to the assets of the estate as he should find them; but he could not make, and could not pretend to make, a fair settlement for the talukdars. He could not pretend to ascertain how much money any one talukdar had spent upon his taluk in the course of the last sixty years. He must fix the revenue of every bigha according to its existing value, and thus the consequence would be that the meritorious talukdars would be fined by an enhancement of his jumma for having improved the value of his share at his own expense, whilst the talukdar who had allowed the value of his land to deteriorate would be rewarded by a reduction of his jumma. There was another objection to this plan, which he believed to be a sound one, and which he knew was felt strongly by the zemindars themselves. If this measure were introduced, there was no doubt that it would open a door to fraud. There was no doubt that many zemindars would create *benami* and other taluks on their estates at inadequate rents, or would pretend to have created such taluks. Their estates might be purchased by persons in ignorance of the fraud, who would ultimately discover that they had bought a losing concern or a bag of law suits, and the consequence of frequent bad bargains of this sort would be that the value of all zemindaries, even of those in which no such frauds had been really committed, would be diminished. He had no doubt that such fictitious tenures would be created in many cases, and he believed that a general reduction of the value of zemindari property would be the consequence."

18. It seems to me that it would be possible, and that it would not be inequitable to give to Government the same right of purchase at the highest bid less than the arrears that it now has under section 58, Act XI of 1859, with power to void encumbrances, that power being withheld from all other purchasers. The defaulter has no right to the value of any part of the purchase-money added by the concession of the power to void encumbrances. It would also, I think, be possible in the following settlement proceedings for Government officers to give consideration to all equitable claims of tenure-holders. It is certain, however, that much odium would be thrown on Government officers by the enhancement. The Legislature, by transferring the power to private individuals, relieves Government and its officers of this unpleasantness. Government purchases under such a rule would be much more frequent than at present. If the system of settlement Sir John Peter Grant's speech contemplated were carried out, it would be a great help to the finances of the Empire, but it would not, in my opinion, be possible or equitable to carry it out. Upon the whole, I am inclined to support the Board's proposal, though the arguments above mentioned against it are strong. It is some protection to the tenure-holders, and it secures them so long as the estate will yield the revenue. When it will not do so, it leaves them at the mercy of the purchaser, and it gives the zemindar the difference between the price without and the price with encumbrances, which he is not entitled to. The first of these objections I see no way of getting over and keeping the revenue secure. The second might be overcome by keeping the excess over the Government dues when it becomes necessary to sell without encumbrances to meet the claims of injured tenure-holders. It might ordinarily go to them in equity, but I fear that in practice the difficulty of distributing it would be great. It may at times, too, be a question how a purchaser, who has purchased with power to void under the present law and defaults, finding he cannot make the estate pay, should be dealt with.

19. I now come to the second phase of the Board's first proposal, as discussed above, viz., whether the desired end can be attained by a slight relaxation of the provisions of the law as to the time within which encumbrances may be registered. On this point also the opinions of the district officers are divergent. Mr. Forbes advocates a modification of

the law in this respect. He is of opinion that unless the limitation as to time is so extended as to practically be removed altogether, it is hopeless to expect that tenure-holders will ever take full advantage of any opportunity afforded them of protecting themselves by registration. He would even do away altogether with the necessity of registration. Mr. Barrow recommends that the time for registration may be extended to one year, and that old tenure-holders may be allowed one year's time to register their tenures. Mr. Hopkins, on the other hand, thinks that a change in this respect is not desirable, as tenure-holders are able to protect themselves, if they choose to do so. Mr. Waller is of the same opinion.

20. Judging from past experience, it seems to me that a modification of the law in this direction will not be attended with any practical advantage. If, however, Government decides upon extending the time of registration, I would simply suggest that application for registration presented beyond the time prescribed in the present law be subjected to the payment of some additional fee in the shape of penalty, on the same principle as that laid down in section 24 of Act III of 1877 (an Act for the registration of documents).

21. The next or the second general proposal of the Board is that in cases in which the Commissioner declines to interfere, the applicant should be allowed the privilege of making a further representation to the Board, in order that the Board may be at liberty to recommend to Government to annul the sale on the ground of hardship. On this point also the opinions of the Collectors are divided. Messrs. Forbes and Waller are in favour of the proposal, while Messrs. Hopkins and Barrow are opposed to it. Mr. Forbes thinks that the proposed course will ensure an uniformity of practice, and that the Board are likely to take a broader view of the case in the interest of the public than local officers would generally do. Mr. Hopkins is of a different opinion. He thinks that there is no necessity for a provision like that proposed by the Board. He writes:—

"I do not see any necessity to suppose or imagine the Commissioner will fail in his duty. If he does so, Government has an easy remedy, and so has the Board under its general power of supervision."

22. This view of Mr. Hopkins is evidently based on a wrong hypothesis. The sale law gives no power to the Board or Government to interfere in cases in which a Commissioner rejects an appeal or declines to take any action under section 26. The power of Government to annul sales on the ground of hardship is expressly restricted to cases which are referred to it by the Commissioner, while the order of the Commissioner in appeal is *final* (section 27).

23. To give a formal right of appeal to the Board would, I think, lead to a large number being uselessly preferred. I think, however, that the Board should have the power of revision, if in any case it sees proper to use it.

24. The third proposal of the Board is that the law as to giving possession to auction-purchasers be amended, so as to remove doubts which have been expressed in some quarters as to the legality of the present practice. The circumstances which have given rise to this question are fully stated in paragraphs 25, 29 of the Board's report.

25. The preponderence of opinion is against the proposal, and the view expressed by Mr. Forbes on this subject deserve consideration. He writes:—

"The analogous sections to section 29, Act XI of 1859, in the Code of Civil Procedure, are sections 318 and 319. The Collector in the one case, and the Civil Court in the other, orders delivery of possession to be given by *removing any person who refuses to vacate* the property. The experience of the Civil Court in this matter is necessarily much wider than that of the Revenue Courts, and it appears to me that, so long as the High Court do not consider the language of the Civil Code to be open to misconstruction, there is no occasion to make any change in the wording of the revenue law. But that revenue officers, acting under section 29 of the sale law, should follow the procedure of the Civil Court under similar circumstances, and that the opinion of the Legal Remembrancer should be considered sufficient for their guidance.

26. No practical difficulty has hitherto been experienced in putting auction-purchasers in possession, and it seems to me that the view taken by the Legal Remembrancer is correct. It is certainly not the province of the Collector to lay down the boundaries of the estate sold, nor is it desirable, in the interest of Government, that this should be done, as it would lead to endless complications.

27. The next question (which is an incidental one) for consideration is whether the sale law should be modified in order to avoid the contingencies which the High Court's decision in this case of Lala Mobaruk Lall involves. The modification suggested by the majority of Collectors is that a rule of limitation should be provided for cases instituted for the reversal of sale. Mr. Forbes is, however, averse to any modification being made in the law in this respect. He writes:—

"The law prescribes a particular procedure for the sale of estates, and if a Collector chooses to disregard it, and sell an estate at a time when purchasers are not likely to attend, the former owner is justly entitled to his remedy. The provisions of section 33 of the sale law appear to be quite sufficient to protect the interest of Government, and any further attempt to escape the consequence of material irregularities committed by its officers would be unfair to the parties concerned."

28. I am not prepared to accept these views. I think it is to the interest of all parties that disputes as to the sale should be promptly dealt with and disposed of. If a sale is held without the notice prescribed by law, and the point is taken in appeal to the Commissioner,

it will certainly be set aside. If such a point is not taken, then I would not allow it to be raised afterwards, and certainly not after any considerable delay. If the notice was so short as really to cause material injury at the sale, the objection would certainly be taken at once. It is to the interests of all parties that the auction-purchaser's title should be as secure as possible.

29. Having discussed the general questions involved in the present correspondence, I now proceed to reply *seriatim* to the four points indicated in paragraph 6 of the Board's letter. These are—

(1) How far zemindars should be allowed to relieve themselves of liability by registering the names of their putnidars as the persons responsible for the payment of the revenue.

(2) Whether the law should recognize the right of any person to pay in arrears after the last day of payment.

(3) Whether this right may be conceded subject to the payment of a fine or penalty.

(4) Whether notice of default should be given by registered letter, and under what conditions.

30. In regard to the first point, there is a concensus of opinion among the Collectors as to the undesirability of allowing zemindars to shift to their putnidars the responsibility of paying the Government revenue. Such a course, if adopted, would be a dangerous innovation, amounting to a deviation from a policy which has been so long successfully pursued.

On this point Mr. Forbes writes thus:—"I am opposed to the proposal that we should deal with putnidars direct. The person responsible for the revenue is, and always has been, the proprietor, and I can see no reason why he should be allowed to shift the responsibility to the putnidars. If the latter has, under a contract with the zemindars, undertaken certain things, I do not see that it is the duty of Government to mix itself up in the matter. Such a course would be certain to lead to complications; and if Government is to recognize the responsibility of putnidars, it must sooner or later allow proprietors to shift their responsibility still further." In this opinion I agree. If the zemindar chooses to let the putnidar pay on his behalf instead of sending a servant to pay, I would receive the money and credit it to the zemindar's account, but I would not reduce or alter the responsibility of the zemindar.

31. In regard to the second point, the observations made by Mr. Forbes seem to be so pertinent and instructive that I make no apology for quoting them in *extenso*:—

"To defaulting proprietors themselves, I would certainly allow the opportunity of saving the sale by depositing the arrears subject to the payment of a penalty. This is what occurs in practice, with the exception that no penalty is exacted, the result being that the number of cases in which payment is delayed until after the last day of payment is increasing to such an extent as in some districts practically to establish two last days of payment—one that fixed by law, and the other the sale day itself. Until Collectors are allowed to exact penalties as the price of exemption from sale, they are powerless in the matter. Defaulters are well aware of the orders of the Board discouraging sales, and they take full advantage of them. This is especially the case as regards the payment of road and public works cess and other Government dues by persons defaulting in respect of land revenue. Clause 4, section II, chapter XIV, Board's Rules, first volume, makes it incumbent on Collectors to require payment in full of all Government dues before the indulgence of exemption is granted, but the other orders referred to, viz. discouraging sales, renders this clause practically a dead letter. I have done my best to enforce the clause by causing the road cess, embankment cess and zemindary dâk cess, towjee clerks to sit during kist time in a line with the land revenue towjee clerks, and by requiring defaulters first to go to the former and satisfy their demands, but to no avail. At first, in many instances, the attempt has been successful, but a few determined defaulters have insisted on paying only the land revenue demand, and their example has quickly been followed by others, notwithstanding that I have actually sold estates (in default of payment of dues other than land revenue) by way of warning. I should certainly not be disposed, as Commissioner, to recommend cancelment of a sale on the score of hardship if the defaulter deliberately neglected to comply with a condition as to paying cesses due from him.

32. I would recognize the right of holders of encumbrances to pay in arrears after the last day of payment, no matter whether their rights are registered or not. All that concerns Government is to see that arrears do not exist, and it is only fair that persons who have some interest in an estate should be allowed to save it by paying the arrears, leaving them to recover it by due course of law.

33. It is a question for consideration whether a similar indulgence should be allowed to defaulting proprietors and co-sharers of defaulting proprietors, and if so, under what restrictions. As a matter of fact, they generally receive every consideration from the Collector, but to prevent them from taking undue advantage of the forbearance of Collectors it is desirable that they should be subjected to the payment of some penalty in the shape of interest or cost. They have to pay interest on account of road cess, and in the case of zemindary dâk cess they have to pay double the amount of the arrear. I do not see why the defaulting proprietors should be allowed to pay the arrears of land revenue after the latest date of payment without some penalty. Looking to the previous history of the sale law, I find that zemindars were held liable to the payment of interest at the rate of 12 per cent. per annum, while in 1824 they were subjected to the payment of a penalty at the same rate in addition to the interest (Regulation XII of 1824). By Regulation VII of 1830 the penalty

and interest were consolidated, and defaulters were subjected to the payment of the impost at a rate not exceeding 25 per cent. This impost was abolished by Regulation XII of 1841. It seems to me desirable to reimpose a similar impost on all arrears which are tendered after the latest date of payment, and the operation of such a measure cannot but have a salutary effect on defaulters. I would require the penalty from defaulting sharer, co-sharers, and holders of encumbrances alike. If this be not done, there will probably be collusion.

34. It is the practice in the districts of this division to require a separate application on stamp paper before exempting an estate from sale.

35. The reply to the second point disposes of the third point.

36. As to the fourth point, the Collector seems to be in favour of the proposal to send notices of default under registered covers. Messrs. Hopkins and Waller suggest that a fee should be charged for each notice, and Mr. Waller would fix such a fee at one rupee for each notice. Mr. Forbes is of opinion that the registered notice should be sent within one fortnight after the latest day of payment. He further suggests that "it be made a rule that no tender of any part of the certified amount be received by the Collector when holding sales, but that the whole of it must be deposited in the Government treasury *before the sale*, and that the treasury challan must be produced at or before the sale, and will be the only proof of payment that will be accepted." This restriction is, Mr. Forbes thinks, necessary in order to prevent delay and confusion incident on receiving money payments in Court. He writes:—

"Defaulters constantly find themselves a few rupees short, or commence to wrangle as to which of them is to produce the last farthing; meanwhile the sale is delayed, for the Collector is obliged to sell in the order in which the estates stand on the roll, and cannot proceed to sell one defaulting estate until those preceding it have been disposed of."

37. I doubt if this suggestion, made by Mr. Forbes, can be adopted without causing some hardship to landholders at times when the pressure of work in treasury is great. It would be difficult for the parties to obtain the treasury challan in time for production before the estate is put up to sale.

38. With regard to the notice by registered letter, Mr. Barrow writes:—

"This would be to undertake a serious task, and if it were a matter of law, it would lead to the annulment of a number of sales. The number of shares and the uncertainty of address would lead to many mistakes. It seems to me that we cannot afford to work against the theory that shares of any estate are in friendly union. The law already provides by registration of separate shares for the protection of those who are in constant disagreement with their co-sharers, and to those who will take the trouble this provision is ample protection. Are we to go a step further and to protect shares in spite of themselves? For undoubtedly when an estate is sold unknown to, or against the will of, some of the sharers, the moving cause is intrigue and internal faction. We should make our procedure as public as possible, but not look after the interests of individuals when they can, if they choose, do it themselves."

39. In addition to the difficulties Mr. Barrow points out, and of which I consider the multitude of shares an important one, there are two others of great importance, viz.—(1) the addresses of zemindars are not known; and (2) they often do not reside at places where there are post offices.

40. If the issue of the notices is conceded, I would only grant it as a matter of grace, and not of legal obligation, and I would not make even proof the posting of the notices necessary to the validity of a sale.

41. There remains one more point to be touched upon, namely, whether the provisions of the sale law should be applied to the recovery of the road cess. This proposal, as might be expected, is universally unacceptable to zemindars, and is also not looked upon with favour by the local officers. Mr. Forbes' report clearly shows how difficult it will be to give practical effect to the proposed plan. The road cess is, I need hardly say, leviable not only from revenue-paying holdings, but also from revenue-free and rent-free tenures. To the latter class of demand the provisions of the sale law cannot be extended.

42. I have now to offer a few general suggestions in connection with the working of the sale law with reference to paragraph 8 of the Board's letter:—

1st—The right of appeal has been conceded only to defaulting proprietors; but in cases when a defaulting proprietor may intentionally allow his estate to be brought to the hammer in order to void encumbrances, it may be considered whether the parties whose rights are affected by the sale should not have the privilege of appealing to the Commissioner on the ground of irregularity.

2nd—In cases in which sales are annulled, the auction-purchasers are allowed a refund of the purchase-money with interest at the highest rate of the current public securities. This is not sufficient compensation, as it not infrequently happens that auction-purchasers are obliged to borrow money for the purpose of purchasing an estate at a higher rate than the interest on Government securities. I would allow 12 per cent., that being the interest allowed by the rent law on arrears of rent, and not excessive, considering that it is ordinarily given for a short period.

3rd—The period of appeal is limited to 60 days, but there are instances, especially where females or minors are sole or part owners of estates, in which interested parties collusively, with dishonest agents or servants, quietly manage to put

up the estate to sale and take no steps to give effect to it until the time for filing an appeal is over. To meet such cases, which are not infrequent, it is desirable that the Commissioner should have the power of admitting an appeal where good cause may be shown after the prescribed period.

43. With regard to the High Court's ruling in the case of Sadhoosorun Singh *versus* Panchdeolal (Bengal Law Report, 14, Calcutta Series, I), referred to in paragraph 5 of the Board's letter, a separate report has already been submitted—*vide* this office No. 758RL, dated 7th February last.

Annexure to letter No. 478RL of the 9th November 1888, from the Commissioner of the Presidency Division to the Board of Revenue, being a *précis* of the opinions of the Collectors on the proposals to amend the Revenue Sale Law.

Points I and II.

Whether the need of a provision that defaulting estates should in the first instance be put up for sale subject to incumbrances is practically felt, and whether the object could not be attained by a comparatively slight modification of the present law.

1st Point.

24-*Pergunnahs.*—Mr. Forbes observes that the meaning of the question is not clear. There is no attempt in the correspondence to define the word "incumbrance," and he also feels uncertain whether the question applies to all incumbrances, whether registered or not, or only to registered incumbrances; and if only to registered incumbrances, then he asks what form of registration is referred to? He writes:—"In paragraph 12 of their No. 531A, dated 4th July 1885, the Board give their opinion that estates should in the first instance be put up to sale 'subject to incumbrance.' This at first sight appeared to me intelligible enough. The proposal seemed to be that the provisions of section 37, Act XI of 1859, should be modified in favour of all under-tenants by placing the auction-purchaser in only the same position as sections 53 and 54 place a purchasing co-proprietor, or the purchaser of a share, viz., by strictly limiting his rights in respect to under-tenants to those which were possessed by the previous proprietors.

"But reading further on, I find that in paragraph 18 the proposal made is that estates should in the first instance be put up to sale 'subject to *registered* incumbrances,' while in paragraph 2 (1) of the Government letter (No. 3580—1258RL, dated the 29th November 1887) forwarded with your circular the words used are 'subject to declared and *registered* incumbrances.' But the only 'registered incumbrances' known to the sale law are those which are already protected by section 39; while there is no such thing as a 'declared incumbrance,' and I do not know what the expression means. It seems to me either that the words 'registered incumbrance' in the question now put must bear some entirely different meaning to that given them in the sale law, or the words 'registered' and 'declared and registered' have been inserted by mistake. The latter appears to me the proper solution. It is the misregistered tenures that are threatened by the first clause of section 37, and it seems to me that it is their case, and theirs alone, which has raised the present discussion.

Commissioner's remarks.

The words in question seem to have reference to such incumbrances as have been notified in the Collector's office with a special view to their protection in case of the sale of the estate (*vide* paragraph 3 of the Government letter), and I understand them to contemplate fresh notices including under-tenures and not merely the tenures of the first degree now protected by common or special registry.

A. S. . .

Yes; and the Government wish to know what incumbrances should be protected at the first sale—*vide* paragraph 5 of their letter.

A. S.

"I therefore understand the question to be that contained in paragraph 2 (1) of the Government letter of the 29th November last, with the omission of the words 'declared and registered.' I am of opinion that this question must be answered in the affirmative. I have myself been aware, when selling an estate, that unfair advantage was being taken of section 37; but I felt myself powerless to interfere. My three most experienced Deputy Collectors give evidence to the same effect."

The Collector quotes the opinions of the Deputy Collectors as below:—

Baboo Hem Chunder Ker.—"It is within my knowledge that the sale of estates is at times brought about solely with a view of having them purchased *benami* free of incumbrances, and that such sales have led to great litigation and ultimate ruin of the parties having subordinate interests in them. I am therefore of opinion that need for a remedy *is at times*, though not often, felt."

Baboo Kali Churn Ghose.—"I am aware of recent cases in which sales of estates and superior tenures have led to great litigation for the avoidance of subordinate interests. These cases are not of frequent occurrence, but affect *sometimes* large tracts and a very considerable number of families."

Baboo Parbutty Churn Roy.—"I know of a case in which the purchaser of an estate by private sale, not being able to enhance the rents of an under-tenureholder, allowed the revenue to fall into arrears with a view to get the estate sold at auction free of incumbrances.

The owners of the under-tenure, to save their property, continued to pay the revenue for some time. But as, in consequence of the under-tenure not having been registered under the sale, it was doubtful if the under-tenureholders could recover from the proprietors of the estate the deposits made by them, they were at last obliged to take new settlements from the purchasers by paying bonus and increased rents."

Commissioner's remarks.

Such would certainly be the result of the proposed measure.

A. S.

But the proposed measure would afford more inducement as well as facilities to the defaulting proprietors to resort to such a subterfuge.

A. S.

The Collector continues:—"Two of the above officers, however, think that a modification of the provisions of section 37 in the manner proposed by the Board might lead to the creation of fictitious tenures or mortgages by defaulting proprietors, as suggested by Government. I do not myself share these apprehensions. A proprietor cannot by *a benami* transaction create any interests which he does not himself possess, and at any rate there is nothing to prevent his adopting such a subterfuge at present, provided only that he registers the newly-created interest.

"But the question must be considered from a broad point of view, divested of imaginary difficulties. Section 37 has given defaulting estates a statutory value far in excess of their intrinsic value. To the latter alone is a selling proprietor justly entitled. It is all that he would get at a private sale. But immediately he fails in his duty towards Government, the law as it now stands waives a magic wand over his estate and invests it with a statutory value at the expense of a number of holders of vested interests, from whom the defaulter has already once received full value, and who are in no way to blame for his default. I can conceive nothing more inequitable. It is not right to assume that fraudulent sales for many of them are nothing else of the kind referred to, but seldom occur, and to argue that therefore all that is necessary is to afford greater facilities for the registration of their interests by the incumbrance-holders. In the first place, revenue officers are not in a position to assert that such cases only seldom occur. The law does not make it their business to enquire into the reason of the default in each particular case, and it is only by accident that they hear of it. The civil courts could probably throw much more light upon this matter than revenue officers; yet I have little doubt but that every revenue officer of any experience could give instances in point. And it is to be remembered that the power of extortion thus placed in the hand of an unprincipled proprietor can be used, and doubtless often is used, against his sub-tenants long before the point is actually reached of his allowing his estate to go to auction. In the second place, we know it by experience that tenure-holders will not register their holdings, and it is useless to expect that more than a small percentage of them will ever do so, unless limitation as regards time is altogether removed. Until the danger is upon them, they will not take heed.

"It is necessary in discussing a question of this kind, where every sentimental argument possible will be made the best use of by one against the other of the classes with opposing interests, to keep the real object steadily in view. The objects aimed at are—

"(1) to secure the Government revenue; and

"(2) to do this in as equitable a manner as is possible to the different parties concerned.

"The defaulting estate must therefore, for the reasons already given, be put up to sale in the first instance at its intrinsic value, that is, subject to all incumbrances, whether registered or not. The defaulter is entitled to no more, and the tenants no less.

"But if the intrinsic value is found to be insufficient to meet the Government claim, what is to be done? Is it right and just that the property should again be put up for sale at its present statutory value, the defaulter being allowed to appropriate the surplus sale proceeds at the expense of the holders of the unregistered incumbrances? I think there can be no doubt but that the only equitable solution is that proposed by the Government of Bengal in 1855. The surplus sale proceeds are some measure of the value to the tenants of Sir F. Halliday's proposal, but its real value to them will be much more than this, inasmuch as their new landlord will be *Government* instead of a possible, and if he be their own landlord back again a *certain*, rack-renter. My own opinion is that in justice to the tenants there should be no statutory value whatever given by the law to defaulting estates, but the Bengal Government should again boldly put forward Sir F. Halliday's scheme."

On the question as to whether the object could not be attained by a comparatively slight modification of the present law, the Collector writes:—

"As I have already said, experience has, I think, sufficiently taught us that, unless the limitation as to time is so extended as to practically be removed altogether, it is hopeless to expect that the tenantry will ever take full advantage of any opportunity afforded them of protecting themselves by registration; for they will not, as a rule, attempt to save themselves until in immediate danger. The time for registration may of course be extended, and the fees reduced, but how far this is to be done seems to me an idle question, which I leave for those who advocate a temporising policy. But even supposing the present rules to be so whittled away as to secure the registration of every registrable tenure in the country, I do not see what advantage is gained that is not attained in a much more simple and effectual manner by Sir F. Halliday's scheme, which does away with the necessity of registration altogether with its attendant trouble and expense, and leaves the purchaser in the same position as he is now left by sections 53 and 54, the only position he has any just right to lay claim to.

Nuddea.—Mr. Hopkins does not think that any change in this respect is necessary in his district, or even desirable. He is of opinion that tenure-holders under the present law are able to protect themselves if they choose to do so. He observes:—

"In the course of my experience I have never known a case in which a revenue sale of an estate has taken place when the tenure-holders are inclined to protect it: in fact, in this district a large number of the estates are let in putni, with the condition that the putnidars and tenure-holders shall pay the Government revenue. This is a responsibility handed over to the tenure-holders, which I of course decline to recognize, but it seems to me to explain to a great extent the non-registration of tenures, and that incumbered estates are not brought to sale: when a zemindar desires to bring his property to sale, but not otherwise, he defaults: tenure-holders are well aware that they are more or less in the zemindars' hands: therefore in the lease under which they hold there is generally a condition empowering the tenure-holders to pay the revenue in case of such default, and deduct it from the rents for which he is liable.

"The above remarks apply of course only when a tenure comprises a whole mouzah or estate. When, however, a tenure is only a part of an estate, I generally find that a separate account has been opened for that interest, and thus the tenure-holder is in the same position as to his tenure as the holder of a 16-anna interest, unless the proprietor of the remaining interest in the whole estate defaults, in which case he is only in the same position as the sharer from whom he took his tenure, and, as far as I can see, deserves no special protection. I do not believe I have ever sold an estate unless both zemindars and tenure-holders wished for the sale to take place, and voluntarily put themselves in the position of defaulters. I think, however, it is right to note that of late years landed property in this district has depreciated, and that many putnidars are only too glad to get rid of their somewhat unprofitable property. This is, however, due to exceptional conditions holding in this district only, which it is not necessary to enter into.

"Practically there is no need in this district for a provision to sell an estate at a revenue sale in the first instance liable to incumbrances.

"Even if the need existed, I should hold that the object could not be attained by a comparatively slight modification of the law. The Revenue Sale Law is the only real restriction we have on the custom, already too prevalent, of subinfeudation, and the reason it is so is that estates are sold free of incumbrance. If this voidance of incumbrance is removed from the law, its chief element of efficiency will be destroyed. The law, as it now stands, affords ample means of protection to tenure-holders if they choose to use it, but they apparently find means of protection themselves quite as efficiently without recourse to the special provisions of the law. I do not at all see why the Legislature should be called on to devise other means of protection: the people themselves are perfectly aware that the law provides means to protection; they do not seek protection under the law, simply because they think they can protect themselves better without it: this being the case, I do not see why we should thrust a new law, or an amended law at them. It seems to me that our Legislature on the one hand is directed professedly to make the people self-reliant, and on the other hand the enactments are loaded with philanthropic provisions which have a tendency to destroy all self-reliance. I am very decidedly of opinion that liability of estates to sale in the first instance with incumbrance will promote subinfeudation, *benami* transactions, and fraud to an extent that will endanger the public revenue. The modification in the law would necessarily not be slight where there is so much to be guarded against. The ultimate sale of an estate with the annulment of all its tenures would necessarily have to be provided for: the procedure of the Collector would thus be complicated with two sets of sales instead of one; the difficulty of collection of land revenue would be thus increased, and with this difficulty increased arrears would also increase. I may add also that, after several intermediate sales with liability to incumbrances, it would be difficult, if not impossible, to decide what incumbrances were voidable, what were not."

Jessore.—Mr. Barrow writes:—

"I have in my own experience known of instances in which tenure-holders were much harassed by the liability of the estate to sale. The proprietors, for reasons of their own, were wishing to sell their estates, and the tenure-holders were as anxious to prevent the sale. I would therefore advocate that tenure-holders of all degrees be given greater facilities for registration. Another year might be allowed for old tenures, and the same period from date of creation for all future ones. Perhaps it would further protect *bonâ fide* tenure-holders if the Collectors were authorised to decide from what date incumbrances should be voided should sale with registered incumbrances not realize the amount in arrear. This would prevent proprietors from having the old ones declared invalid by the creation of new tenures. I cannot, however, state that I believe there is felt want of such protection to tenure-holders. If, however, the law were altered, so that all estates should be sold first with incumbrances, the inclination of proprietors to create new ones might be developed. The mere change of law would tend to unsettle customs, and many men might choose this way of raising money, and certainly if they did and allowed the estates to be brought to sale, the interests of the old and more valuable tenures would be endangered."

Khulna.—Mr. Waller writes thus on the point:—

"Enquiry shows that under-tenures are scarcely ever declared void after a sale for arrears of revenue. One reason for this is no doubt the great difficulties an ousted tenure-holder can put in the way of his successor if he likes. It is no doubt due to a sense of security combined with apathy that so few applications for common or special registry have been made hitherto.

"I think that if estates were declared liable to sale first subject to incumbrances, it would certainly lead to the creation of fictitious incumbrances as a second line of defence for defaulters to find shelter behind when their estate had been sold for arrears If the proposal to provide for registration and protection of incumbrances, and to put estates up or sale, in the first instance, subject to such registered incumbrances be adopted, then I would confine the registration to those incumbrances which may be, or might have been, but for the three months' and three years' limitation, registered under the existing law

"As to relaxing the provisions of the present law as to the time within which incumbrances may be registered, it does not seem from past experience that this would result in the registration of incumbrances to a larger extent. There does not seem to be any more need for allowing the registration of tenures held direct, or of under-tenures not held directly from the proprietor for protection in the case of sales under Act XI, than there is in that of sales under Regulation VIII of 1819, were the provision of Regulation VIII as to protection of interests by tender of arrears after the latest day reproduced *mutatis mutandis* in Act XI In the latter case it is considered sufficient to allow the under-tenure-holders the opportunity of lodging the arrears in case of default by the putnidars to protect their interests, and it would seem that by providing a similar procedure under Act XI of 1859 the interests of tenure and under-tenure-holders would also be sufficiently protected in case of an estate falling into arrear under Act XI "

Moorshedabad—Mr Dalton writes —"In so far as I can ascertain after consulting the subdivisional officers, Court of Wards' Managers, and other officers possessed of local knowledge, there have been very few instances in this district in which tenures have been voided by the sale of the parent estate.

"Since the passing of Act XI of 1859, 149 tenures have been registered by common registry and 13 by special. The number of putnis in this district up to 1873 was 1,064. It is impossible to say how many may have been created since, as there has been no general revolution under the Cess Act, but the number may be roughly estimated at 2,000.

"My collectorate peshkar estimates that of whole and undivided estates, 10 per cent are let in putni, and that of ijmali estates, *i. e.*, of estates which are the property of a number of proprietors in co-parceny, a much larger proportion, or as much as 50 per cent, is let in putni The latter class of estates form the large majority of estates in this district, being 1,981 in number against 400 estates, the property of single individuals, and in 800 of such estates separate accounts have been opened

"The putnidars in such estates enjoy comparative security as the default of a shareholder in whose name a separate account is opened, and the sale of his share would not void the putni if held under all the shareholders conjointly, and it is very unlikely that all the shareholders will default at once

"About 10 per cent of the putnidars, it is calculated, get as much as 100 per cent profits on their rent, *i e.*, they pay to the landlord 50 per cent. of what they collect. About 20 per cent get 50 per cent profit, and the rest about 25 per cent. This profit includes cost of collection

"The old putnidars, whose leases date from before the passing of Regulation VIII of 1819, are the wealthiest and derive the largest profit

"Within the last 20 or 25 years, a number of small putnis have sprung up, and as a rule the zemindars have driven much harder bargains with them, and have not much to gain by the voidance of these tenures.

"Since the passing of Act XI of 1859, 644 estates have been sold in this district for arrears of revenue The number of notices of sale which are issued are very numerous, probably amounting to about 700 or 800 yearly. It is clear that estates have not been sold unnecessarily at every sale one or two applications are made by putnidars to pay in arrears and save the estate, and such applications are invariably allowed. But I can find no instance of a complaint being made to the Collector after the sale by a putnidar that his tenure had been lost by the collusive default of his landlord No doubt such cases occasionally occur.

"The Deputy Collector of Lalbagh informed me that he knew of a case in which a zemindar, wishing to sell his zemindari first, let the whole of it out in small putnis, taking consideration money from each tenure-holder, and then defaulted, thereby pocketing the price of a non-incumbered estate, plus the consideration money paid for the tenures on it which became void by the sale. But such cases are rare

"It is not worth a zemindar's while to get rid of the putnidar, if by doing so he can only get 25 per cent more than the rent paid by the tenure-holders, and has at the same time to take the risk and cost of collection I am informed that a large majority of the ryots, under the putnidars in this district, hold at fixed rents, *i e*, the 20 years' presumptionism is in their favour, and even where their title is not clear, it is hardly worth the zemindar's while to bring suits to contest it

"Owing to one or other of the above reasons, probably few auction-purchasers care to take advantage of the powers the law gives them of ousting the putnidars.

"The wealthier and larger putnidars look after their own interests, having agents at head-quarters instructed to pay in any arrears which the zemindars may allow to accrue

"It is suggested that the time allowed for registration under Act XI for new under-tenures, *i.e.*, three months from the date of creation, is too short. It is also said that the fee of 5 per cent. plus the incidental charges, such as muktears' fees, &c., deter several small tenure-holders from registering, and that the fee might be reduced to Rs 2 per cent. for tenures with a rent of Rs 500 But I cannot say that 5 per cent. appears to me too much

to pay for the privilege, and I doubt whether the cost would deter any one who considered himself really exposed to risk.

"The sale of estates subject to incumbrances in the first instance appears to me the only rational one of getting over the difficulty. Objections raised to this mode of procedure appear to me all more or less chimerical. Practically, I do not think it would be found that it would lead to the creation of fictitious tenures to any extent. I am bound to say that some of the most experienced of the old *amlah* here think that such tenures would be created, and the selling value of property would deteriorate, but I do not see that the selling value need be considered from any but a revenue point of view; nor do I think that a rule under which estates falling into arrears should be put up subject to incumbrances and sold, provided the bid amounted to the arrear due, would seriously affect the value of land in the open market. But I do fear that in many instances there would be no bids for the estates at the first sale; either the zemindar's agent, or any other intending purchaser purposely refraining from bidding with the intention of forcing the sale of the estate free of incumbrances; and as in the majority of instances, where putnidars are concerned, the tenure-holder is ignorant of the zemindar's default until after the sale, it is to be feared that unless a fresh notice was issued and fresh opportunity given to the tenure-holders to appear and pay up the arrears, they would derive no benefit.

"It is not clear whether it is intended that the second sale should take place on the same day and immediately after the first proves abortive; and for the above reasons I think an interval of at least 15 days must be allowed, and fresh notices served, and it is to be considered whether any more effectual way of giving notice to tenure-holders can be devised. Of course where the tenures are known, notice can issue, but many tenures exist of which we have no knowledge

"If it were made law that any tenure-holder desirous of securing that in the event of a sale of the estate with voidance of tenures, a notice shall be served upon him prior to such sale, may have his name entered, without prejudice, in a register to be kept for the purpose on his filing an application to that effect on an eight-anna stamp, I think it is likely that most tenure-holders would avail themselves of the privilege. Such notice might either issue to all tenure-holders, whose names were registered as above simultaneously with the sale notice, or notice might issue to them on failure of first sale of the zemindari right only, in which case it would be necessary to fix a fresh date for the sale after 15 or 30 days as might be thought necessary.

Point III.

Whether, with reference to the High Court's decision in the case of Lala Mobaruk Lall, the law should be modified with the object of providing that sales for arrears of revenue should, after a limited period, be considered final if they have not been questioned in the interval.

24-*Pergunnahs.*— The Collector is of opinion that the decision was perfectly fair. He observes:—"The law prescribed a particular procedure for the sale of estates, and if a Collector chooses to disregard it, and sells an estate at a time when purchasers are not likely to attend, the former owner is justly entitled to his remedy. The provision of section 33 of the sale law appears to be quite sufficient to protect the interests of Government, and any further attempt to escape the consequence of material irregularities committed by its officers would be unfair to the parties concerned."

Jessore.—Mr. Barrow is of opinion that the law might be amended so as to provide that no sale held under the colourable procedure of the law should be declared null and void, unless a suit be brought to have it declared so within a certain time.

Nuddea.—Mr. Hopkins observes that this is a matter to which too much importance is given. A Collector failed in his duty through error or inadvertence; he does not see how such accidents can be avoided or evaded. A rule of limitation, should, he thinks, be provided for such cases.

Khulna.—Mr. Waller remarks that, considering the effect of the ruling, it seems necessary to provide that, unless the validity of a sale for arrears of revenue is questioned within the period allowed before it is confirmed, it shall become final.

Point IV.

How far zemindars should be allowed to relieve themselves of liability by registering the names of their putnidars as the persons responsible for the payment of the revenue.

24-*Pergunnahs.*—Mr. Forbes writes:—"I am opposed to the proposal that we should deal with putnidars direct. The person responsible for the revenue is, and always has been, the proprietor, and I can see no reason why he should be allowed to shift the responsibility to the putnidar. If the latter has, under a contract with the zemindar, undertaken certain things, I do not see that it is the duty of Government to mix itself up in the matter. Such a course would be certain to lead to complications, and if Government is to recognize the responsibility of putnidars, it must sooner or later allow proprietors to shift their responsibility still further."

Nuddea.—Mr. Hopkins is of opinion that the responsibility of the zemindar could not be shifted altogether, but that it will probably be found that this is what zemindars are aiming

at, viz., to enjoy the unearned increment without a thought or care, that practically putnidars can pay the revenue just as easily as a zemindar's servant, and that he would recognize a right to pay up arrears after the latest day of payment.

Jessore.—Mr. Barrow thinks that, in the circumstances mentioned, an executive order might require a notice by registered letter to be served on the proprietors.

Khulna.—Mr. Waller does not think that zemindars should be allowed to relieve themselves of liability by registering the name of a tenure-holder or mortgagee as responsible for the payment of the revenue. If, however, zemindars find such liability irksome, they might be permitted to rid themselves of it by agreeing not to claim to have their estates exempted on tender of arrears after date in case of default by putnidar or mortgagee.

Point V.

Whether the law should recognise the right of any person to pay the arrears after the last day of payment, and whether the right may be conceded subject to the payment of a penalty.

24-*Pergunnahs.*—Mr. Forbes writes thus on the question:—"Under Sir F. Halliday's scheme these proposals become unnecessary. That the holders of incumbrances, certainly of registered incumbrances, should be allowed to protect themselves by some such measure can, I think, admit of no doubt. But then the question arises, how are they to recover the amount of arrears they deposit? The rent they pay to the defaulting proprietor may be too small to enable them to recoup themselves by withholding its payment, while recovery by suit, or the certificate procedure, from the defaulter will probably only end in his estate being again put up for sale, and we shall come back to where we started (the only difference being that in the latter case it will be put up to sale subject to all incumbrances, whether registered or not). Still if Sir F. Halliday's proposal is not to be again brought forward, the best course will be to allow any incumbrancer-holder to save the sale in the manner proposed, and to recover the deposit made for the purpose from the defaulter, either by withholding rent, or by the certificate procedure.

"To defaulting proprietors themselves I would certainly allow the opportunity of saving the sale by depositing the arrears, subject to the payment of a penalty. This is what actually occurs in practice, with the exception that no penalty is exacted, the result being that the number of cases in which payment is delayed until after the last day of payment is increasing to such an extent as in some districts practically to establish two last days of payment, one that fixed by law, and the other the sale day itself. Until Collectors are allowed to exact penalties as the price of exemption from sale, they are powerless in the matter. Defaulters are well aware of the orders of the Board discouraging sales, and they take full advantage of them. This is especially the case as regards the payment of road and public works cess and other Government dues by persons defaulting in respect of land revenue. Clause 4, section II, chapter XIV, Board's Rules, first volume, makes it incumbent on Collectors to require payment in full of *all* Government dues before the indulgence of exemption is granted, but the other orders referred to (viz., discouraging sales) renders this clause practically a dead letter. I have done my best to enforce the clause by causing the road cess, embankment cess, and zemindari dâk cess towji clerks to sit during kist time in a line with the land revenue towji clerks, and by requiring defaulters first to go to the former and satisfy their demands, but to no avail. At first in many instances the attempt has been successful, but a few determined defaulters have insisted on paying only the land revenue demand, and their example has quickly been followed by others, notwithstanding that I have actually sold estates (in default of payment of dues other than land revenue) by way of warning. A provision of the kind proposed would be of the greatest possible use in diminishing the number of cases of default; besides compensating Government for the time of its officers expended in realizing arrears, as well as for the loss of interest it now suffers when payment is made after the latest day, the very gain of which interest by defaulters acts as an inducement to default. In this district it is the practice to require a separate petition for exemption on an eight-anna stamp in the case of each defaulting estate. Notice of an estate being in arrears is not given."

Nuddea.—Mr. Hopkins writes:—"Generally payment is accepted on cause shown. I imagine that any Collector who refused to accept a payment after the last day, when sufficient grounds for default were shown, would come under the severe censure of Government. If this is not sufficient to make the general body of Collectors perform an obvious duty with tact and discretion, no section of an enactment will do so. He further adds:—I have said above no right should be conceded: a graduated stamp duty might be levied on applications to Collectors for revenue arrears after the last day of payment, according to the amount of arrears and the number of days elapsed since the last day of payment. The recognition of such applications would no doubt encourage persons to default, but they would then have to pay for the luxury in cash, as well as being held in a state of suspense as to the ultimate fate of their property."

Jessore.—Mr. Barrow is of opinion that the law should not recognise any such right, the matter being left to executive authority, and if there were an appeal from the Commissioner to the Board, all cases of hardship would be provided for. The payment of a penalty might, he thinks, be legalised.

Khulna.—Mr Waller makes the following remarks on the points —

"As payments must be received of arrears tendered after the last day if sufficient cause is shown, and as it is virtually impossible to determine in many cases whether cause shown is really true or not, it seems desirable to provide by legal enactment that the Collector should, before accepting revenue after date, be able to inflict a fine, not exceeding 25 per cent. of the amount of arrears, the percentage being regulated by the length of time after the latest day elapsing before tender, and the apparent *bonâ fides* of the cause shown. In this connection, I would suggest that one co-sharer would more readily make good the default of another on the last day if the procedure for levy under the certificate procedure provided in analogous cases under the Road Cess Act were extended to payment of revenue due by defaulting co-sharers. At present recovery by a civil suit for contribution is costly and troublesome."

The Collector further adds:—"I have already stated above that it seems to me that the procedure provided under Regulation VIII of 1819 in respect of tender of arrears after the latest day might be applied in the case of arrears of revenue. The only persons whom I would allow to so tender arrears would be persons with an interest to protect in the estate in arrear. I would have interest at 12 per cent per annum leviable to date on all such arrears, with such penalty for needless delay and carelessness up to 25 per cent. of the demands as the Collector might adjudge. It is the custom here to require a separate stamped petition for tender of arrears of each estate. Notice in case of arrears of small proportion to the annual revenue is sent by postcard here."

Point VI.

Whether notice of default should be given by registered letters, and under what conditions.

24-*Pergunnahs*.—Mr. Forbes approves of this proposal. He recommends that notices of default be addressed by registered letter within one fortnight after the latest day of payment to all defaulters, informing them of the amount due, including all arrears (whether of land revenue or other demands), penalty and cost; the full amount or any portion of it still outstanding to be recovered from the sale proceeds if not fully paid into the Government treasury before the hour fixed for the sale. In connection with this matter the Collector makes a further suggestion, viz., that if he made a rule that no tender of any part of such certified amount be received by the Collector when holding sales, but that the whole of it must be deposited in the Government treasury before the sale, and that the treasury challan produced at or before the sale be the only proof of payment that will be accepted. This, the Collector thinks, is very necessary in order to prevent delay and confusion incident on receiving money payments in courts during the sale. He remarks that defaulters constantly find themselves a few rupees short, or commence to wrangle as to which of them is to produce the last farthing; meanwhile the sale is delayed, for the Collector is obliged to sell in the order in which the estates stand upon the roll, and cannot proceed to sell one defaulting estate until those preceding it have been disposed of."

Nuddea.—Mr Hopkins sees no objection to extending the privilege, so long as no responsibility rests with the Collector as to the receipt of the notice. The condition of such notice should, he thinks, be the realisation of a fee on each notice, when the property is not sold from the defaulter, or from the sale proceeds when the property is sold.

Jessore.—Mr. Barrow writes:—"This would be to undertake a serious task, and if it were a matter of law, it would lead to the annulment of a number of sales. The number of shares and the uncertainty of address would lead to many mistakes. It seems to me that we cannot afford to work against the theory that sharers of an estate are in friendly union. The law already provides by registration of separate shares for the protection of those who are in constant disagreement with their co-sharers, and to those who will take the trouble this provision is ample protection. Are we to go a step further and to protect sharers in spite of themselves? For undoubtedly, when an estate is sold unknown to, or against the will of, some of the sharers, the moving cause is intrigue and internal faction. We should make our procedure as public as possible, but not look after the interests of individuals when they can, if they choose, do it themselves."

Khulna.—Mr. Waller sees no objection to sending notice of default by registered letter to persons wishing it on payment of a fee of, say, one rupee. He is of opinion that no tender should be received after 15 days from despatch of the registered notice unless non-receipt be clearly proved

Point VII.

Whether an appellant should be allowed to make a further appeal to the Board on the ground of hardship when his appeal has been dismissed by the Commissioner

24-*Pergunnahs*.—The Collector agrees with everything the Board have said in paragraph 24 of their No. 531A, dated 4th July 1885. He thinks that uniformity of practice will be better assured, and the Board are likely to take a broader view of the case in the interests of the public than local officers would generally do He notes that the limit of interest allowed by section 32, Act XI of 1859, should be raised at the discretion of the authority annulling the sale to any rate not in excess of 12 per cent. Auction-purchasers have, he states, frequently to borrow their funds at 10 per cent. or more.

Nuddea.—Mr. Hopkins remarks:—"I see no necessity for it. I do not see any necessity to suppose or imagine the Commissioner will fail in his duty. If he does so, Government has an easy remedy, and so has the Board under its general powers of supervision. If we go into such hypothesis, where are we to draw a line? The Commissioner is human and liable to error, so are the Members of the Board, and equally so the Local Government; all these may fail to secure a defaulter against injustice. I do not think the additional security against injustice is worth the inconvenience of extending the power of appeal. For all practical purposes the Board and Government do exercise supervision which is given by law, viz., a regulation unrepealed of 1793. This supervision is used so frequently and commonly that it is often alleged that there is no such thing as finality in Government business."

Jessore.—Mr. Barrow is of the same opinion.

Khulna.—The Collector thinks that there should be reserved to the Board as well as to the Government a power of revision of such an order of the Commissioner.

Point VIII.

Whether the law as to giving possession to purchasers should be amended so as to remove any doubt as to the legality of the present practice.

24-*Pergunnahs.*—Mr. Forbes writes:—"The analogous section to section 29, Act XI of 1859, in the Code of Civil Procedure are sections 318 and 319. The Collector in the one case and the Civil Court in the other orders delivery of possession to be given *by removing any person who refuses to vacate* the property. The experience of the Civil Courts in this matter is necessarily much wider than that of the Revenue Courts, and it appears to me that so long as the High Court do not consider the language of the Civil Code to be open to misconstruction, there is no occasion to make any change in the wording of the revenue law; but that revenue officers, acting under section 29 of the sale law, should follow the procedure of the Civil Court under similar circumstances, and that the opinion of the Legal Remembrancer should be considered sufficient for their guidance."

Nuddea.—Mr. Hopkins writes thus on this question:—

"A doubting and a questioning spirit rules everything in the present day; but I fail to see why doubts and questions should prevail when we find that present practice is found to be inconvenient, or rather more generally inconvenient than convenient, by all means alter it. In the course of my career I have had one case of this sort only brought under my notice: the purchaser at a revenue sale asked for delivery of possession and demarcation of boundaries three or four years after the sale. In most cases the lands sold have been exactly laid down in the revenue survey, or in a settlement map when there has been no revenue survey. As far as I can see, the only procedure necessary is a certificate, a map when wanted, and a proclamation. I see no reason for removing persons refusing to vacate property so sold. A proclamation, followed by civil or criminal proceedings, as the purchaser may be advised, is all that is necessary as far as the Collector is concerned. Defining boundaries and land would lead to endless complications, which any one who is acquainted with land disputes can fully understand.

Khulna.—Mr. Waller thinks it desirable to amend the law as to giving possession to auction-purchasers, so as to lay down clearly the principles stated in paragraph 26 of the Board's letter to Government as the opinion of the Legal Remembrancer on the subject.

Point IX.

Whether the procedure under the sale law can be extended to the recovery of demands under the Cess Act of 1886.

24-*Pergunnahs.*—Mr. Forbes is opposed to the recovery of the cess demands under the sale law. He is of opinion that such a measure would be quite inapplicable to his district where there are between 9,000 and 10,000 revenue-free holdings assessed with cess, which have never been mapped or surveyed. Until this has been done, and an opportunity given, at immense trouble and expense, to incumbrance-holders to register their incumbrances, the Collector does not see how the summary sale procedure can be made equitably to apply. He writes:—"Defaulters are now given due warning by the service of certificate notices, and the least possible injury is done to vested interests by the sale of nothing but the actual right, title and interest of the judgment-debtor. Nothing could be more reasonable and fair than this from the point of view of the parties. Looking at the matter from the Government point of view, I cannot see what is to be gained by the proposed change. It is possible, though this is quite a matter of guess, that defaulters might become less under a harsher sale law; but if the whole of the procedure in respect of defaulting estates is also to be gone through in respect of cess defaults in addition to the service, as at present, of certificate notices, the expense and trouble to Government officers will be quite out of proportion to any advantage gained. What would be much more effectual would be the imposition of some effective penalty in the case of cess arrears, such as is levied in that of zemindari dâk cess arrears, instead of the mere payment of the interest [under section 45, Act IX (B.C.) of 1880] to which little regard is had by defaulters, and I would certainly recommend some amendment of the law in this direction."

Nuddea.—Mr. Hopkins reports that the proposal is generally unacceptable to all landlords. He thinks that the only direction in which such procedure is worth considering is the feasibility or otherwise of making the revenue and cess payable at the same time in the same office. He adds :—"But there are obvious objections to this. I will mention only one : that one is indeed purely sentimental, but it would carry weight with the multitude, namely, it would corroborate the allegation that the cess demand is a direct infringement of the permanent settlement."

Jessore.—Mr. Barrow writes thus on this question :—"I have long been strongly of opinion that there should be some consolidation of revenue and road cess. For the reason, however, stated in the first paragraph, I have not had an opportunity of consulting the landed interest. It has, however, been suggested to me that the amalgamations would be distasteful to the owners of large properties, as it would often compel them to raise the money at high interest to pay the road cess demand. Under the present procedure the estate cannot be sold for some months, and in the meantime they can arrange to collect the money. On this ground, and also on account of the minute dislike of the people of this country to meet pecuniary engagements with punctuality, the proposed change would be unpopular. On the other hand, in the case of small estates, the costs in certificate cases must be proportionately so heavy, and the small sharers must find it so difficult to detect when a co-sharer has defaulted, that I feel sure it would be much to their advantage to give them one simple account. All this selling and buying, too, under the Certificate Act must tend to foster litigation, and make land management more expensive. The new Tenancy Act has lately added a new source of expense in requiring notices to be served on landlords, and anything that tended to simplify and cheapen land management could not but be a boon to the country."

Khulna.—Mr. Waller, Collector of Khulna, writes thus :—"I have consulted the chief zemindars holding land in this district, and they are unanimously against the proposal to make the cess demand realizable under the sale law. The main reasons given for this opinion are that such a measure would be a breach of the permanent settlement, and that they have no effective means at their command for the prompt levy of their ryot's share of the cess from them. Neither of these arguments, however, seem of much weight, for there is no promise in the permanent settlement law that zemindaries shall not be made liable to sale for road cess, and the zemindars have the same means of recovering cess that they have for recovering rents from their ryots. I think that if the provisions of Act XI of 1859 be modified so as to provide that notice of default shall be sent, and for legal right to pay in arrears up to date fixed for sale with interest and a penalty if necessary, there would be no valid reason why cesses should not be made as punctually payable as revenue. Of course cesses are payable by landholders paying no revenue ; and in the case of such persons, unaccustomed as they are to the punctual payment of revenue under Act XI, it would be necessary to show some leniency at first, until the new system was fully known, and the results of default understood severally."

"The average cost in a certificate case for realization of cesses is about Rs. 2-12. This cost is certainly excessive in cases of which the demand is below Rs. 20, of which kind a large number is annually filed. The amount of trouble is very little, as seldom, if ever, is any objection made. Certificate cases remain pending from three to six months, and there are opportunities for causing vexatious delay in the proceeding involving a good deal of trouble. Sales seldom take place. There were only five such last year : the prices obtained were very insufficient. Where no objection is filed, it takes usually three, and where objection is made, some six months to complete the proceedings."

No. 133A, dated Calcutta, the 12th February 1889.

From—C. E. Buckland, Esq., Offg. Secretary to the Board of Revenue, L. P.,

To—The Secretary to the Government of Bengal, Revenue Department.

In continuation of my No. 3A, dated the 4th January 1889, I am now directed to reply to your letter No. $\frac{3580}{1258}$ LR, dated the 29th November 1887.

Mr. Reynolds.

The expected report from the Commissioner of the Patna Division has not yet been received, but the Board do not think it expedient that on this account they should longer postpone the submission of their reply to Government.

2. Before entering upon any consideration of the amendments of the Revenue Sale Law which it may be thought desirable to introduce, the Board would ask attention to the great inconvenience and liability to error which result from the arrangement of the law as it stands at present. The substantive law on the subject (omitting some minor amending Acts, and some subsidiary provisions in the Land Registration Act of 1876 and in the Court of Wards' Act of 1879) is embodied in Act XI of 1859, Act VII (B.C.) of 1868, and Act VII (B.C.) of 1880. It is provided that these Acts, so far as is consistent with the tenour thereof, shall be read and construed as one Act; and that the definitions of the Act of 1868 shall apply to the Act of 1859, but that those of the Act of 1880 shall not apply to the two other Acts. A law thus worded involves, in the first place, a manifest danger that the provisions of one of the Acts may be overlooked in administering either of the others; and secondly, an element of uncertainty upon the point whether a particular section of the Act of 1859 or of 1868 is or is not consistent with the tenour of the Act of 1880.

3. An example might be quoted, in which even the High Court has apparently been led into an error by the confused and uncertain manner in which the law is arranged. The learned Judges are reported to have held* that the law makes no special provision for the manner in which a notice under section 10 of the Public Demands Recovery Act is to be served; it having been overlooked that section 5 of Act VII (B.C.) of 1868 prescribes the manner of serving notices. In another case, of much greater importance, the High Court has ruled that by the force of section 2, Act VII (B.C.) of 1880, the provisions of section 2, Act VII (B.C.) of 1868 became applicable to a sale under an execution issued upon a certificate made under Act VII (B.C.) of 1880, and that consequently the appeal against the sale lies to the Revenue Commissioner, and the provisions of sections 311 and 312 of the Civil Procedure Code are not applicable. Although the Board will not presume to say that this decision is not in strict accordance with the law, they feel sure that such an effect of the wording of the Act was not contemplated or desired by the Legislature. Irrespectively, therefore, of any questions of amendment or revision, the Board are of opinion that the time has come for taking in hand the task of consolidating and codifying the law for the recovery of arrears of land revenue and public demands recoverable as such arrears.

* I. L. R., 12, 603.

4. Projects of consolidation, however, invariably result in proposals for change; and in the present case it would clearly be impossible to pass a merely consolidating Bill. Nor would such a course, even if it were practicable, be expedient. Act XI of 1859 is still the principal law on the subject; and the experience of 30 years must necessarily have brought to light imperfections and flaws in a measure which so deeply affects the interests of a large and influential class of the community. The Board will therefore proceed to discuss the amendments and modifications which have been suggested, premising that their consideration of the question will not extend to every point of detail, but will be confined to those general principles upon which they are of opinion that the revision of the law should be based.

5. The Board's letter No. 531A of the 4th July 1885 recommended the insertion of a section providing that estates shall in the first instance be put up to sale subject to encumbrances, and shall only be sold with the present power to avoid encumbrances in the event of the bidding at the first sale not being sufficient to cover the outstanding demand and costs. It will have been seen from the papers submitted to Government with my letter No. 3A, dated the 4th January 1889, that the great majority of the officers who have been consulted are opposed to this suggestion. It is urged that there is no general or serious hardship calling for redress; that there would be no bidders for an estate sold subject to encumbrances; that the scheme would encourage the creation of fictitious tenures; that subinfeudation is so pernicious as to make it inexpedient to give tenure-holders a more secure position; while the Commissioner of Bhagulpore goes so far as to say that the proposal would be unfair to proprietors who wish to get the highest possible price for their estates.

6. In the face of opinions so numerous and so decided, the Board feel some hesitation in pressing an opposite view upon the Government. But Mr. Reynolds must say that personally his opinion remains unchanged, and he would add that the view which he advocates has the occurrence of his distinguished predecessor in the Board, Mr. Dampier, than whom there could be no better or safer authority. The hardship is that the law permits and legalizes a grievous injustice, and it is no sufficient answer to say that in point of fact this injustice is less frequently perpetrated than the law allows. The Board's letter above referred to noticed a very flagrant instance of this injustice; and a similar case is given in the letter from the Commissioner of Rajshahye lately laid before Government. It is, moreover, admitted to be the common practice for the auction-purchaser to come to terms (as it is euphemistically called) with the tenure-holders, and to recognize their tenures on the payment of a *salami*. In other words, the tenure-holders, instead of being totally ruined, are only partially despoiled, and instead of being evicted are only compelled to buy over again, at the price imposed by the landlord, the rights which they have bought already. An example of this is given in the letter of the Commissioner of Chittagong. The auction-purchaser, he reports, did not annul a single tenure; he merely revised the rents so as to give himself a fair profit, and this proceeding, which was grossly unfair to the tenure-holders, is complacently noticed by the Commissioner as a strong case in favour of the present system. That no one would bid for an estate sold subject to encumbrances is an assertion without evidence and (it may added) without probability. This is not found to be the case in sales in the Civil Courts, or in sales held under the Certificate Procedure. All objections on this head would be removed if the amended law were framed on the lines of section 168 of the Tenancy Act. It is not easy to see why fictitious tenures would be created on an estate sold for arrears of revenue, more than on an estate sold under a Civil Court decree; but it would be reasonable to enact that no tenure or encumbrance registered after the latest day of payment shall be recognized. The mischief of subinfeudation is a topic on which it is easy to theorise; but the fact remains that the district in which subinfeudation most largely prevails (the district of Backergunge) is also the district in which all classes, down to the lowest, enjoy a higher degree of material comfort than can be found in any other part of Bengal. As to the "impecunious zemindars" commiserated by the Commissioner of Bhagulpore, the Board can feel no sympathy with proprietors whose object it is to obtain, in the selling price of their estates, the value of rights with which they have already parted.

7. On the whole, the Board are inclined to adhere to the opinion that in this matter the law as it stands affords opportunities for much possible injustice, and they believe that some of the objections which have been advanced against their scheme are unsound, and that

others would not prove serious in practice. But they are willing to admit that there does not seem to be any general or urgent demand for this amendment of the law.

8. The plan referred to in the letter of the Presidency Commissioner as having been recommended by Mr. Forbes is not one which the Board could advise the Government to adopt. It was considered and rejected by the Legislature when the Act of 1859 was under discussion, and the arguments against it appear as valid now as they were then. As for the palliative measures which have been suggested as substitutes for the acceptance of the principle of selling estates subject to encumbrances, the Board do not think they would have any beneficial effect. Several of the officers who have been consulted wish to give tenure-holders (as they express it) another chance, to allow a further term of two years for the registration of old tenures, and to extend the term for the registration of new tenures from three months to one year. The Commissioner of Rajshahye believes that many holders of old tenures would now register if they could. Any measure of this kind would, in the Board's opinion, be a repetition of the mistake which was committed when Act III (B C.) of 1862 was passed. If old tenure-holders would now register if they could, how does it happen that, of new tenures, not one in twenty is registered? It would be useless to pass a law which would be totally inoperative. Experience has fully shown that tenure-holders regard the contingent danger of cancelment as too remote to make it worth their while to avail themselves of the protection which registration would afford. If the law is to interpose in their behalf, it must be by doing something for them, and not by giving them another opportunity of doing something for themselves.

9. The next point to be considered relates to the notices which the law requires to be issued before an estate is sold for arrears; and in connection with this point the Government has called for an expression of the Board's opinion on a proposal made by the British Indian Association, that notice should be given to registered mortgage-holders and to proprietors who had registered the names of putnidars as ordinarily paying the revenue on their account.

10. The law as it stands does not contemplate the issue of any notice to individuals. It requires—

(1) A notification to be affixed in the Collector's office and in the Judge's court;

(2) A notice to the tenants, forbidding them to pay rent to the defaulting proprietor;

(3) (Under certain circumstances, as when as estate is under judicial attachment) a special notice to be issued 15 days before the latest day of payment.

In petitions of appeal against sales, the statement that the notices required by law were not duly issued is invariably made as a matter of course, and without the smallest regard to the truth or falsehood of the allegation. It seems desirable that the law should clearly lay down that a proprietor whose estate has been sold is not entitled to plead the non-service of notices under section 5 or section 7 of the Act. The notice under section 7 is meant for the protection of the tenants, and the notice regarding an estate under attachment is intended, as the Privy Council have remarked, for the benefit of the judgment-creditor.

11. But though no notice to individuals is at present necessary, the Lieutenant-Governor is empowered, by section 6 of Act VII (B.C.) of 1868, to authorise the issue of notices to defaulting proprietors, and the recovery of the cost of such notices. This section was introduced into the Act with special reference to the circumstances of the Cuttack district, and no general use has been made of its provisions; but the Board see no objection to a further extension of the principle which it involves. They would allow any person interested in an estate, whether proprietor, mortgagee, judgment-creditor, or tenure-holder, to register a name and address in the Collector's office on payment of a reasonable annual fee; and the Collector should then be bound, on the occurrence of any default, to send immediate notice of the same by registered letter to the registered address. It would of course be understood—*first*, that the Collector is responsible only for the despatch, and not for the receipt of the notice; and *secondly*, that the registration of a name and address does not involve any transfer of the liability to pay the revenue. It will be seen from the correspondence submitted to Government that some of the officers who have been consulted appear to have thought that the proposal of the British Indian Association implied a transfer of the liability from the zemindar to the putnidar. Such a transfer would of course not be permissible; but the Board do not understand that it was ever proposed. It seems desirable, though it would not be absolutely necessary, that provision for the issue of such notices should be made by law, and not merely by an executive order of Government.

12. The law declares that "no payment, or tender of payment, made after sunset of the latest day of payment, shall bar or interfere with the sale, either at the time of sale or after its conclusion." The stringency of this "sunset law" (as it is popularly termed) has been tempered by the repeated instructions which have been issued, enjoining Collectors to administer the law with leniency and discretion. Indeed, it is now a common subject of complaint that the prescribed last day of payment has become a misnomer, and that up to the very moment of sale the Collector is besieged with tenders of payment and applications for exemption which are put forward rather as claims of right than as matters of grace. On the other hand, it is certain that a Collector would be strictly within his legal right if he were to insist upon selling an estate bearing a revenue of a lakh of rupees for a default amounting to a single anna, even though the balance might have been tendered to him five minutes after sunset on the latest day of payment. The Commissioner, if an appeal were made to him, would have no power to reverse such a sale, though it might eventually be annulled by the Lieutenant-Governor on the ground of hardship.

13. Whether payment after the appointed day shall, under any conditions, confer a *right* of exemption from sale is a question upon which, as the correspondence shows, there is much difference of opinion. It is urged by some officers that the concession of any such right would endanger the security of the Government demand of revenue, and would tend to encourage a spirit of carelessness and unpunctuality. No one, it is said, would pay at the appointed time, if a right to pay afterwards were reserved to him. On these grounds the Commissioner of Chittagong opposes any relaxation of what he terms the potential severity of the law, and the Commissioner of Bhagulpore even denies that the sale law is a severe one. But the present state of the law cannot be regarded as satisfactory. The Collector, under section 18, has an absolute discretion to exempt an estate from sale, though he is required to record his reasons for granting the exemption. In general, however, no reasons are recorded, but a simple order of exemption is passed on the Collector being satisfied that all Government demands have been paid. Cases often occur in which an estate has fallen into arrear through culpable negligence on the part of the proprietors, and in which the appropriate order would be for exemption on payment of a penalty or fine. But the levy of any penalty or interest is prohibited by Act XII of 1841, and consequently the Collector can adopt no middle course: he must either exact the extreme penalty of ordering the estate to be sold, or he must exempt it from sale without exacting any penalty at all. He has no time to make detailed enquiries into the circumstances which have led to the default; and many of those around him are interested in concealing the real facts from his knowledge. He knows that he will incur censure if he is either too lenient or too severe; and it need be no cause for wonder if the absolute discretion which the law places in his hands is not always exercised with absolute wisdom and equity.

14. Influenced by considerations of this kind, many of the officers who have been consulted recommend a recurrence to the system which prevailed before 1841, and the levy of a penalty upon arrears of revenue. In this view the Board are disposed to concur. They would allow any person to obtain, as of right, the exemption of an estate from sale on payment of the arrear with all Government demands and such penalty as may be prescribed. But it should also be provided that the payment must be made, and the order for exemption passed, at least seven clear days before the day of sale, and that after that date the Collector shall have no power of exemption whatever. Whether the penalty should be a percentage on the amount of the arrear, or a fine proportioned to the delay in tendering payment, is a matter of detail which need not be discussed here; but it should in any case be a substantial amount, and not merely a levy of interest. On the whole the Board are inclined to think, with the Commissioner of Rajshahye, that the Collector should not be allowed a discretion to waive the exaction of the penalty.

15. If the law were modified in the manner suggested in the preceding paragraphs, no proprietor's estate need be sold without his knowledge and consent. By registering his name and address he would always receive notice of a default having occurred, and by payment of a specified penalty he would have a right to save his estate from sale. The Board are not insensible to the objections which might be urged against the principle of their scheme, or to the difficulties which may arise in the practical working of it; but on the whole they believe that it would be welcomed by landed proprietors as a valuable concession, and that Collectors would be glad to be relieved of the duty of exercising the discretion with which they are vested by the present law.

16. It may be added that in this case it would possibly also be feasible to make the cess demand realizable under the sale law. The correspondence shows that the proposal has not been fully put before the landholders, and the Commissioners of the Presidency and Chittagong Divisions assume that it would be universally unacceptable to them. But from other reports it appears likely that large and solvent proprietors would not object to it. There is undoubtedly much to recommend the change, on grounds both of convenience and of economy, as the present system of recovering cesses by the certificate procedure is both dilatory and expensive. But the Board do not think that the provisions of the sale law should be made applicable to these demands, unless it is shown that the general body of landholders are in favour of the proposal; and they would therefore recommend that a fuller expression of the opinion of that class should be invited before any change is made. To clear up some misconceptions which exist, as the correspondence shows, it should be explained that the proposal does not affect lakhiraj or rent-free lands; but that what is suggested is that when the payment of the revenue of an estate can be enforced under the sale law, the payment of the cesses due from it shall be liable to be enforced by one and the same procedure.

Government letter No. 119—42LR, dated 10th January 1889.

17. In the orders of Government noted in the margin, an expression of the Board's opinion was invited on a proposal made by the Eastern Bengal Landholders' Association for extending the provisions of section 49 of the Cess Act to excess payments of revenue by sharers. The Board would be willing to agree to this, since there seems as good reason for allowing the privilege in the case of revenue as in the case of cesses. But it is not likely that it would have much effect, as the cess reports do not show that section 49 is at all extensively used at present. In connection with this matter the Board desire to call attention to a manifest oversight in the wording of the present law. By clause (*b*) of section 9 of the Public Demands Recovery Act a notice of demand for money due to a manager must bear a stamp as for a plaint. But no corresponding provision is found in section 49 of the Cess Act, and a certificate under that section is issued on an application bearing a stamp of 8 annas only. This should be corrected, if the summary procedure by certificate is extended, as the memorialists request, to excess payments of revenue.

18. On fuller consideration the Board are not now inclined to press the adoption of the suggestion made in their former letter, that in any case in which a Commissioner dismisses an appeal and does not exercise his power of reference under section 26, the appellant should be allowed to petition the Board on the ground of hardship, and the Board should be at liberty to recommend Government to annul the sale. It is a point of no great importance; and though cases have occasionally come to the Board's notice in which Commissioners have dismissed appeals which they might more properly have referred, it is on the other hand very desirable, that the validity of revenue sales should be finally settled with as little delay as possible.

19. The 4th paragraph of the Board's circular letter to Commissioners (No. 1141A, dated the 16th December 1887) drew attention to the decision of the High Court in the case of Lala Mobaruk Lall—a decision which affords a curious example of the fallibility of legislation. There can be no doubt that the legislators of 1859 and of 1868 intended to provide that no suit to annul a sale should be entertained by a Civil Court, unless it were instituted within one year of the sale becoming final, and that no person who had obtained a sale certificate should have his title affected by any plea of omission or irregularity in the service of notices. The Legislative Councillors thought that they had secured these objects by the precise and careful language which they introduced into section 33 of the Act of 1859 and section 8 of the Act of 1868. But the acumen of the Judicial Bench has discerned that these sections have no such effect as was intended. It seems that, if the prescribed formalities are not duly observed, the sale ceases to be a sale under Act XI of 1859, and consequently the provisions of the Act do not apply to it.

20. The great majority of the officers who have been consulted think that the law should be so amended as to secure the finality of sales. But it is observable that most of them suggest the enactment of provisions which are in the law already. It is, in the Board's opinion, very desirable, in the interests both of the Government and of auction-purchasers, that sales should become final within a reasonable period, and should not be liable to be afterwards questioned. But the decision in Mobaruk Lall's case raises a doubt whether it is possible for human ingenuity to devise a form of words which shall not be liable to be defeated by the plea that any irregularity in the proceedings takes the case out of the provisions of the Act. The adoption of some such language as is suggested by the Commissioner of Chota Nagpore seems to the Board to afford the best prospect of attaining the desired end.

21. On the other case, that of Sadhusarun Singh, the Board have already submitted a separate report to Government. As it appears from the opinion of the Advocate-General that recourse must be had to legislation, the Board would recommend that it should be enacted that, when property is sold in execution of a certificate, the Collector (as defined in section 4 of the Public Demands Recovery Act) should have power to set aside the sale on objection made, and that his order for setting it aside should be final; but that his order for confirming the sale should be appealable to the Commissioner, whose order should in like manner be final.

22. It remains only to notice section 29 of Act XI of 1859, regarding the mode in which possession of a purchased estate is to be delivered. How seriously the existing law on the subject is misunderstood may be seen by a reference to the letters of the Commissioners of Chittagong and Dacca. The former officer thinks that the interests of Government require better protection, but he shows that he has quite misapprehended the position of an auction-purchaser, and that he has failed to grasp the principle that a purchaser at a sale for arrears is the successor in title of the person with whom the settlement was made. The latter officer reports an outrageous case, in which he was actually called upon to turn a zemindar out of his dwelling-house, on the plea that he refused to vacate the property. The law should make it clear that nothing of this kind is intended; that it is not the province of the Collector to give possession within any specific boundaries; that if a purchaser wishes to restore the estate to the condition in which it was at the time of settlement, he must do so by suit in the Civil Court; and that the ejectment of persons who refuse to vacate only means that a person whose title has been obviously annulled by the sale may be debarred from any further exercise of his former rights.

No. 1057A, dated Calcutta, the 20th November 1888.

From—C. E. Buckland, Esq., Offg. Secretary to the Board of Revenue, L. P.,
To—The Secretary to the Government of Bengal, Revenue Department.

Mr Reynolds.

I am directed to submit, for the consideration and orders of Government, the following representation on the working of section 19 of the Public Demands Recovery Act, VII (B.C.) of 1880, as interpreted by the High Court in a judgment passed on the 30th April 1886.

2. The section referred to declares that all the practice and procedure provided by the Code of Civil Procedure in respect of sales in execution of decrees shall apply to every execution issued to enforce a certificate. In March 1883 the Commissioner of Dacca asked for the instructions of the Board as to the proper interpretation of this section. He represented that an appeal had been preferred to him against an order of the Collector of Backergunge setting aside the sale of an estate held by a Deputy Collector in execution of a certificate. The Commissioner enquired whether such an appeal was admissible, as it appeared to him that the proper procedure was under sections 311-312 of the Code, and that section 588 of the Code barred any appeal against the orders of a court for setting aside a sale.

3. Mr. Dampier referred the question to the Legal Remembrancer, with an expression of his own concurrence in the opinion of the Commissioner. Mr. Rampini, who was then acting

as Legal Remembrancer, took the same view. In his letter No. 317, dated the 23rd May 1883, he wrote as follows :—"I agree with the Board in thinking (1) that the provisions of section 311 *et seq* of the Code of Civil Procedure, as to procedure subsequent to the actual sale of immoveable property, apply to cases of sale of immoveable property held under the Public Demands Recovery Act; (2) that the provisions of section 588 bar an appeal against an order under the second paragraph of section 312, setting aside a sale on objection; and (3) that appeals from appealable orders, passed by a Deputy Collector who has been specially appointed by the Lieutenant-Governor to perform the functions of a Collector under the Public Demands Recovery Act, will lie to the Commissioner."

4. Fortified by this opinion, the Board were about to issue a circular order on the subject when another case, involving the same points, came before them in appeal, and was argued on behalf of the appellant by Mr. Bell, who contended that the proper procedure for setting aside a sale in execution of a certificate is not under section 311 of the Procedure Code, but by appeal to the Commissioner under section 2, Act VII (B.C.) of 1868. At Mr. Dampier's request, Mr. Bell drew up a memorandum of his argument, and the Board forwarded this to the Legal Remembrancer, with the request that he would take the matter into his further consideration, and would obtain the opinion of the Advocate-General if he thought it necessary to do so.

5. Mr. Rampini, in his reply, entered fully into the question, and gave his reasons for thinking Mr. Bell's contention to be erroneous. He forwarded an opinion by the Advocate-General, who stated that he considered Mr. Bell's views to be mistaken, and that he agreed with the Legal Remembrancer in thinking sections 311-312 of the Procedure Code to be applicable to certificates ales. The Board then issued their circular No. 1 of August 1883 in accordance with these opinions. A copy of this circular is annexed for reference.

6. The question came again before the Board in August 1884, in an appeal from an order of the Additional Commissioner of Patna. The Collector of Shahabad had sold, in execution of a certificate, an estate which belonged to a large number of proprietors. Some of them appealed to the Commissioner under Act VII (B.C.) of 1868, and some applied to the Collector under section 311 of the Procedure Code to set aside the sale. The Commissioner dismissed the appeals and ordered the sale to be confirmed, and it was against this order that the appeal was preferred to the Board. There was no doubt that if the Commissioner had jurisdiction, his order was final by law; and the question therefore was whether he had jurisdiction to entertain, under section 2, Act VII (B.C.) of 1868, an appeal against a sale held in execution of a certificate.

7. The case was very fully argued before the Board, the Advocate-General having been retained on one side and Mr. Evans on the other. The Board (Messrs. Cockerell and Reynolds), in concurrence with the argument put before them by the Advocate-General, reversed the Commissioner's order on the ground that the law gave him no jurisdiction to entertain the appeal. The judgment of the Board expressed a confident opinion that Act VII (B.C.) of 1868 is not applicable to certificate sales. A sale under a certificate, it was remarked, is not a sale under Act VII (B.C.) of 1868 or Act XI of 1859, but a sale under the Code of Civil Procedure. If immoveable property is sold under a certificate, the sale is not a sale of an estate or share of an estate, but a sale of the rights and interests of the judgment-debtor.

8. The High Court, however, in the case referred to in the first paragraph of this letter, took a different view. Their Lordships' judgment was substantially in accordance with the opinion which Mr. Bell had put before the Board in 1883. The learned Judges considered that only the provisions of the Procedure Code up to the stage at which the auction sale is held apply to an execution issued to enforce a certificate, and that the remedy of a judgment-debtor whose property has been wrongfully sold is not under sections 311 and 312, but by appeal to the Commissioner under section 2, Act VII (B.C.) of 1868. On the publication of this judgment in the Law Reports, the Board, after consulting the Legal Remembrancer, thought it necessary to cancel their circular of August 1883, and to issue a new circular (No. 3 for January 1887) drawing the attention of revenue officers to the High Court's exposition of the law, and prescribing the procedure to be followed in accordance with the new ruling. This circular, a copy of which is appended, reproduces those portions of the judgment which bear upon the question.

9. In August 1887, Mr. R. H. Wilson, Officiating Commissioner of the Burdwan Division, represented to the Board the very serious results caused by the change of procedure which their circular of January 1887 had introduced. A copy of Mr. Wilson's letter is submitted herewith ; and it will be seen that in his opinion the change had been prejudicial both to the convenience of the public and to the interests of the Government, and he strongly pressed the expediency of early legislation. On receipt of this letter the Board invited the opinion of all other Commissioners on the questions which Mr. Wilson had raised.

10. Replies from all divisions have now been received, and the Commissioners and their district officers are unanimous in bearing testimony to the inconvenience of the present procedure, and in recommending either that occasion should be taken to have the matter re-argued before a Full Bench of the High Court, or that recourse should be had to legislation.

11. It is not for the Board to attempt to criticise a decision of the High Court. But there can be no impropriety in their saying, that if the Hon'ble Judges who decided Sadhusarun's case had had an opportunity of hearing the argument of the Advocate-General on the point, it is possible that they would have come to a different conclusion as to the applicability of Act VII (B.C.) of 1868 to certificate sales. It therefore appears to the Board to be advisable that, before any steps are taken to alter the law, some means should be found of

raising the question before a Full Bench, and the Board would recommend that the Advocate-General should be consulted as to the manner in which this may be done.

12. If the case cannot be thus re-opened, or if the ruling of the Divisional Bench should be affirmed by the Full Court, the Board would earnestly urge the necessity of early steps being taken to amend the Public Demands Recovery Act, and to prescribe by law a simple procedure for the redress of any hardships which may be caused by irregular sales of property in execution of certificates. It would, the Board believe, be superfluous for them to explain at length the reasons which lead them to recommend that if the interpretation of the law cannot be altered, the law itself should be changed. It is not merely that it is a manifest grievance that a person whose property has been wrongfully sold, should be debarred from making an application on the spot to the officer by whose orders the sale was held, and should be referred for his remedy to an appeal to the Commissioner of the division. The difficulty goes further and deeper than this. The ruling of the High Court was passed in a case in which immoveable property had been sold. But the wording of the judgment would equally apply to sales of moveable property. If the learned Judges are right in holding that only the provisions of the Procedure Code up to the stage at which the auction sale is held apply to an execution issued to enforce a certificate, it would seem to follow that a person whose moveable property has been sold must appeal to the Commissioner under Act VII (B.C.) of 1868, and that the subsequent proceedings will be regulated by Act XI of 1859, an Act which is manifestly inapplicable to sales of moveable property. Even when immoveable property has been sold, it is hardly possible in many cases to apply the provisions of Act XI of 1859. The Commissioner of Patna has represented that the form of certificate prescribed by section 28, Act XI of 1859 is unsuited to cases in which a ryoti holding, or a plot of lakhiraj land, has been sold. But the form is prescribed by law, and the Board have no power to modify it.

13. It appears to the Board that the procedure indicated in their circular of August 1883 is convenient and suitable for dealing with these cases, and they would therefore recommend that if the circular is finally determined not to be in conformity with the law, it should be legalised by a modification of the wording of the Act.

REVENUE CIRCULAR.

AUGUST 1883.

Mr. Reynolds.

No. 1.

Under section 19 of the Public Demands Recovery Act, VII (B.C.) of 1880, a certificate may be enforced under the provisions of the Code of Civil Procedure as a decree for money. The section further provides that "all the practice and procedure provided by the said Code of Civil Procedure in respect of sales in execution of decrees; * * * * shall apply to every execution issued to enforce such certificate." With reference to this the Board are advised—(1) that the rules prescribed by section 311 *et seq* of the Civil Procedure Code come strictly within the terms "Practice and Procedure" as above employed, and that therefore those sections are applicable to cases of sale under the Public Demands Recovery Act; (2) that the provisions of section 588 of the Code of Civil Procedure bar an appeal against an order under the second paragraph of section 312 setting aside a sale on objection; and (3) that appeals from appealable orders passed by a Deputy Collector who has been specially appointed by the Lieutenant-Governor to perform the functions of a Collector under the Public Demands Recovery Act lie to the Commissioner.

REVENUE CIRCULAR.

JANUARY 1887.

Mr. Reynolds.

No. 3.

1. The Board's circular No. 1 for August 1883 is cancelled.

2. The attention of all officers who are entrusted with the working of the Public Demands Recovery Act, 1880, is drawn to the judgment passed by the High Court on the 30th April 1886 in the case noted in the margin. The portions of this judgment which bear upon the present question are extracted below.

Mitter and Norris, JJ.

Sadhusarun Singh and another, plaintiffs ... *Appellants.*

Versus

Panchdeo Lall and others, defendants .. *Respondents.*

I. L. R., 14, Calcutta, 1.

3. In this case a share of an estate belonging to the plaintiffs was sold on the 16th September 1881, in execution of a certificate for arrears of road and public works cesses due up to the September kist of 1880, and was purchased by the defendants. The plaintiffs applied to the Collector to set aside the sale, and their application was rejected. They appealed to the Commissioner, who rejected the appeal; and they then brought a suit in the Civil Court, which was dismissed by the Subordinate Judge, but was remanded by the High Court on the grounds set forth in their decision.

4. The learned Judges, after pointing out that a certificate does not become absolute unless the notice under section 10 is shown to have been served, proceed as follows to explain the law regarding appeals from sales of immoveable property held in execution of certificates:—

"Supposing that there are material irregularities in publishing or conducting a sale held in execution of a certificate issued under Act VII (B.C.) of 1880, and supposing such irregularities have caused substantial injury to the owner of the property sold, what are his remedies? Is he entitled to proceed under section 311 of the Civil Procedure Code, or section 2, Act VII (B.C.) of 1868, by way of appeal to the Revenue Commissioner against such sale? or is he entitled to pursue both these remedies?

"There is no express provision in Act VII of 1880, or the cognate Acts, that the judgment-debtor in a case like this would be entitled to pursue both remedies. It would also create very great confusion, and might result in conflicting orders of concurrent courts, if it were held that both remedies are open to him. Section 19 of Act VII (B.C.) of 1880 says that all the practice and procedure provided by the said Code of Civil Procedure in respect of sales in execution of decrees, &c., shall apply to every execution issued to enforce a certificate. It seems to us that the words "in respect of sales in execution of decrees" do not include any proceedings instituted after the sale for setting it aside. We think therefore that only the provisions of the Procedure Code up to the stage at which the auction sale is held apply to an execution issued to enforce a certificate, and therefore the provisions of sections 311 and 312 are not applicable * * * * We are of opinion that the only remedy of a judgment-debtor, whose property has been sold in execution of a certificate issued under Act VII (B.C.) of 1880, and who had sustained substantial injury by reason of a material irregularity in publishing or conducting the sale, is by way of an appeal under section 2 of Act VII of 1868, Bengal Council. * * * * * We think that by the force of section 2, Act VII of 1880, the provisions of section 2, Act VII (B.C.) of 1868, became applicable to a sale under an execution issued upon a certificate made under Act VII of 1880 * * * * The effect of this section is that Act XI of 1859 and Act VII of 1868 and Act VII of 1880 are to be considered as if the provisions contained in them were contained in one Act, so far as such construction is consistent with the terms of the last-mentioned Act. That being so, the sale in this case may be considered as a sale under Act VII of 1868, within section 2 of that Act. The appeal under that section against the sale therefore lies to the Revenue Commissioner. Similarly, all sales under Act VII of 1880 would become final in the manner and at the time provided in section 27 of Act XI of 1859."

5. In accordance with this decision of the High Court, the following procedure should be observed by District Collectors and other officers vested with the powers of a Collector under the Public Demands Recovery Act:—

(1) When, in execution of a certificate, immoveable property is sold by an Assistant or Deputy Collector empowered to perform the functions of a Collector under Act VII (B.C.) of 1880, no appeal against the sale lies to the Collector of the district.

(2) The officer holding the sale has no power to set the sale aside.

(3) The remedy of any person aggrieved by such sale is by appeal to the Commissioner under section 2, Act VII (B.C.) of 1868.

(4) The order of the Commissioner on such appeal is final.

(5) The Commissioner may refer the case to the Board of Revenue under section 26, Act XI of 1859.

(6) As soon as a sale becomes final, the Collector must give the purchaser a certificate under section 28, Act XI of 1859, and must deliver possession under section 29.

(7) The purchase-money must be applied in accordance with section 31, Act XI of 1859.

No. 370RG, dated Burdwan, the 16th August 1887.

From—R. H. Wilson, Esq., Offg. Commissioner of the Burdwan Division,
To—The Secretary to the Board of Revenue, Lower Provinces.

Sadhusarun Singh and another ... *Plaintiff.*
Versus
Panchdeo Lall and others ... *Defendants.*

I have the honour to call the attention of the Board to the very serious results caused by the change of procedure in respect of sales under the Public Demands Recovery Act, 1880, which was introduced by the Board's circular No. 3 of January 1887, in accordance with the decision of the High Court in the case noted in the margin.

2. Formerly it was supposed that section 311 of the Civil Procedure Code was applicable to such sales, and consequently any person aggrieved by the sale of his immoveable property could apply for relief to the Certificate Deputy Collector; and in the event of the desired relief being refused, an appeal lay to the Collector under the provisions of section 588 of the Civil Procedure Code.

3. Since the introduction of the new procedure prescribed in the above-mentioned circular, the only remedy open to a person aggrieved by the sale of immoveable property under the Public Demands Recovery Act lies in an appeal to the Commissioner, whose orders are final.

4. The Board are well aware that, especially in districts such as Midnapore, in which many thousands of certificates are issued every year, a certain number of erroneous sales must

be expected to occur, and I cannot but think it a very great hardship that a ryot in the Contai subdivision, for instance, whose holding has been wrongly sold, should have no remedy without appearing and producing the witnesses who are required to prove—to take the most common case—non-service of notice before the Commissioner of Burdwan. Such a state of things practically amounts in petty cases to a complete denial of justice.

5. It is, I think, essential to the successful working of the Public Demands Recovery Act that means should be readily available for remedying such mistakes as may occur at any stage of its very summary procedure. The interests of Government too are in the present instance directly concerned, because erroneous sales for which there is practically no remedy will result in suits against the Secretary of State, which it will be hard to defend. I have at present before me a notice of suit from the purchaser in a sale held under the Public Demands Recovery Act of a holding which did not in fact belong to the certificate-debtor. He claims to be put in possession, and as he has duly paid the purchase-money, he has clearly some ground of complaint, though, on the other hand, the unoffending rightful owner would, I presume, be entitled to damages if he were ousted. This is even now far from being an isolated case, and if matters are allowed to remain as at present, such cases will undoubtedly become frequent.

6. On the whole it appears to me to be absolutely necessary that the powers formerly exercised by Certificate Deputy Collectors under section 311 of the Civil Procedure Code should in some way be restored to them; and if the High Court ruling above cited must be taken as settled law, I would beg to press very strongly upon the Board the expediency of proposing early legislation.

No. 3798—1549LR, dated Calcutta, the 1st December 1888.

From—P. Nolan, Esq., Secretary to the Govt. of Bengal, Revenue Dept.,
To—The Solicitor to the Government of India.

I am directed to forward herewith copy of a letter from the Board of Revenue, No. 1057A, dated the 20th November 1888, and of its enclosures, regarding the interpretation of section 19 of the Public Demands Recovery Act, VII (B.C.) of 1880, and to request that you will be so good as to obtain the Hon'ble the Advocate-General's opinion on the following points:—

(1) Whether it is practicable to obtain a revision by the High Court of the exposition of the law laid down by Justices Mitter and Norris in the case of Sadhusarun Singh and another (plaintiffs) *versus* Panchdeo Lall and others (defendants), page 1, I. L. R., volume XXV, to the effect that the only remedy of a judgment-debtor whose property has been improperly sold under a certificate issued under Bengal Act VII of 1880 is by way of appeal to the Commissioner under section 2 of Bengal Act VII of 1868.

(2) Whether, if the law be as found in that case, it follows that the Collector must give a purchaser at such sales a certificate under section 28, Act XI of 1859, must deliver possession under section 28 of that Act, and must apply the purchase-money in accordance with section 31, as stated in Board's circular No. 3 of January 1887.

(3) Whether the Hon'ble the Advocate-General considers that legislation is necessary for the purposes indicated in paragraph 12 of the Board's letter.

No. 1281, dated Fort William, the 17th December 1888.

From—R. L. Upton, Esq., Solicitor to the Government of India,
To—The Secretary to the Government of Bengal, Revenue Department.

Referring to your No. $\frac{3798}{1549}$ L.R. of the 1st instant, I have the honour to forward herewith a copy of the Hon'ble the Advocate-General's opinion on the subject therein referred to.

OPINION.

As there are not conflicting judgments on the subject, the question cannot be brought before a Full Bench for decision.

If another Division Bench differs from the judgment recorded by the Bench which decided the case referred to, that Bench might refer the matter to a Full Bench. I am of opinion that the decision is erroneous, and that the only method of doing away with the effect and inconvenience which is the result of the judgment is to legislate.

(Sd.) G. C. Paul,

Advocate-General.

The 14th December 1888

No. 737A, dated Calcutta, the 10th September 1889.

From—C. W. Bolton, Esq., Offg. Secretary to the Board of Revenue, L. P.,
To—The Secretary to the Government of Bengal, Revenue Department.

The Hon'ble F. M. Halliday.

In continuation of the letter from this office No. 1057A, dated 20th November 1888, I am directed to submit herewith a copy of a correspondence noted in the margin* on the question whether, in view of the High Court's decision in the case of Sadhusaran Singh and another, a sale in execution of a certificate issued under Act VII (B.C.) of 1880 conveys to the purchaser the absolute title in the property sold or only the rights and interests of the judgment-debtor, and to say that, in the Board's opinion, the legislation suggested by the Advocate-General should be introduced as soon as practicable.

* Board's letter No. 34A, dated 16th August 1889, to the Legal Remembrancer;
Legal Remembrancer's letter No. 746, dated 31st August 1889, to the Board, and it enclosure.

No. 34A, dated Calcutta, the 16th August 1889.

From—C. W. Bolton, Esq., Offg. Secy. to the Board of Revenue, L. P.,
To—The Superintendent and Remembrancer of Legal Affairs.

The Hon'ble F. M. Halliday.

A question having been raised whether, in view of the High Court's decision in the case of Sadhusaran Singh and another *versus* Panchdeo Lall and others, I. L. R., 14, Cal., I, a sale in execution of a certificate issued under Act VII (B.C.) of 1880 conveys to the purchaser the absolute title in the property sold or only the rights and interests of the judgment-debtor, I am directed by the Board of Revenue to request that you will be good enough to favour them with your opinion and also to obtain the opinion of the Advocate-General on the point.

2. The learned Judges having ruled that the provisions of Act XI of 1889 apply to sales under the certificate procedure from the moment that the sales have been effected, it follows that a certificate of title should be given to the purchaser under section 28 of that Act, and that certificate, the Board understand, conveys an absolute title in the property, and not merely the rights and interests of the judgment-debtor. As such certificates are not granted until the time allowed for appeal to the Commissioner under section 2 of Act VII (B.C.) of 1868 has expired, the only remedy left to any person whose property has been wrongly sold is by civil suit; but under section 33 of Act XI of 1859 a civil suit could be instituted only on the ground of some irregularity in the proceedings connected with the sale. If, therefore, the procedure up to the sale has been in strict accordance with the law, property not belonging to the judgment-debtor which has been sold under a certificate cannot apparently be recovered by its owner. It is obvious that very serious injustice may be done if this be the consequence of the ruling in the above case. Attachment under the certificate procedure generally issues against the estates registered in the name of the defaulters in the Land Registration Department, but the latter may not be the *dejure* owners of those estates, and the real owners would, on the certificate sale becoming absolute, be deprived for ever of the right of recovering their property. They are also denied the right of appeal to the Commissioner before the sale becomes absolute, as it has been held by the Advocate-General that such appeals can be preferred only by the defaulting proprietor, who, in the eyes of the revenue authorities, can apparently be only the person in whose name the property has been registered in the collectorate.

3. I am to forward for ready reference a copy of circular No. 3 of January 1887, which the Board issued in consequence of the decision in the case of Sadhusaran Singh and another *versus* Panchdeo Lall and others.

No. 746, dated Calcutta, the 31st August 1889.

From—T. T. Allen, Esq., Supdt. and Remembrancer of Legal Affairs,
To—The Secretary to the Board of Revenue, Lower Provinces.

In reply to your No. 34A of the 16th instant, I have the honour to send an opinion of the Advocate-General on the question asked. As I always regarded the decision of the High Court (Norris and Mitter, JJ.) on which the Board's circular is based as erroneous, I think it unfortunate the circular was issued. As to what passes by the sale under Act VII (B.C.) of 1880, it is certain nothing passes but the right, title and interest of the judgment-debtor; consequently a certificate such as Act XI of 1859 provides for a sale of *an estate* is quite inadmissible.

OPINION.

The question raised in the present case is, as I understand it, whether upon a sale in execution of a certificate issued under Act VII (B.C.) of 1880 becoming final in the manner and at the time provided in section 27 of Act XI of 1859, as it was held to do in the case of Sadhusaran Singh *versus* Panchdeo Lall, I. L. R., Cal., I, a certificate of title should issue under

section 28 of Act XI of 1859, which the section is sufficient evidence of the title to the estate or share of an estate sold being vested in the person or persons named, or whether a certificate should issue under section 316 of the Code of Civil Procedure, which vests the title to the property sold in the purchaser so far as regards the parties to the suit and persons claiming through or under them.

Since section 27 of Act XI of 1859 has been held to be the law under which sales under Act VII of 1880 become final, I think that it follows that the certificate to be issued upon the sale becoming final is that provided for in the following section. I do not see how the two sections (sections 27 and 28) can be divorced. As to section 316 of the Code, that section says—"when a sale of immovable property has become absolute in manner aforesaid," and is therefore, as the law stands, inapplicable..

If the finality of the sale is to be ascertained by reference to section 27 of Act XI of 1859, it appears to me to follow that section 28, and not section 316, of the Code must govern the issue of the certificate.

The above opinion is the logical result of the decision in I. L. R., 14, Cal., I, followed by the next case in the same volume. But these decisions are erroneous. I believe, in a case in which I appeared before Mr. Reynolds, he held an opinion contrary to that pronounced by the High Court. It is much to be regretted that he did not adhere to his own opinion. As confusion must arise from following the High Court decision to its logical consequences, I think the Legislature should be moved to neutralise the effect of the High Court rulings.

G. C. Paul,

Advocate-General.

The 30*th August* 1889.

W. J.—Reg. No. 4912—15—10-10-89